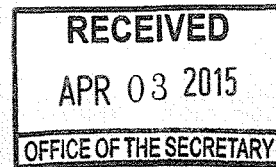


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-16293

In the Matter of

LAURIE BEBO, and  
JOHN BUONO, CPA,

Respondents.

THE DIVISION OF ENFORCEMENT'S  
MOTION TO INTRODUCE PRIOR SWORN  
STATEMENTS OF TWO MEMBERS OF ALC'S  
BOARD OF DIRECTORS WHO RESIDE OUTSIDE  
OF THE UNITED STATES

Pursuant to Rule of Practice 235(a)(2), the Division of Enforcement respectfully requests that the Court admit into evidence testimony transcripts of two members of ALC's board of directors who reside outside of the United States. The Division also moves, pursuant to Rule 235(a)(5) and the Court's February 6, 2015 Order, to admit the declaration of a former ALC employee regarding her attendance at the Ventas facilities. In support of its motion, the Division states as follows.

**A. Background: Bebo's "Blame the Directors" Defense**

Bebo's defense appears premised on her unsupported claim that she fully disclosed to ALC's board of directors her scheme to include large numbers of employees and other non-residents in the Ventas covenant calculations, and that the directors approved the practice. Specifically, Bebo has testified that in February 2009, purportedly before ALC began including employees in the covenant calculations, Bebo sought permission to do so from ALC's Chairman of the Board, David Hennigar. According to Bebo, who herself was a board member, Hennigar told her that the remaining board members had considered the issue outside of Bebo's presence and approved the inclusion of employees in the covenant calculations. Bebo further testified that later in 2009 she disclosed to the board additional details, including that the practice had grown in scope and that ALC was including

in the calculations individuals: (a) who did not travel to the Ventas properties, (b) who were not ALC employees, and (c) who were simultaneously listed as occupants of multiple properties.

**B. The Directors, Under Penalty of Perjury, Deny Bebo's Charges**

Six directors, under penalty of perjury, have denied Bebo's allegations that the board approved, or was made aware of the scope and extent of, Bebo's scheme. At the hearing, the Division anticipates that at least three directors – Alan Bell, Mel Rhineland, and Dr. Charles Roadman II – will testify in person.<sup>1</sup> However, two other board members – Mr. Hennigar and Malen Ng – are Canadian citizens who reside outside of the United States. Their attorneys have informed the Division that they will not be in the United States and available to testify at the hearing.

On August 28, 2013, after the Division had disclosed its investigation to Bebo and requested that she provide testimony, Hennigar was deposed in litigation between Bebo and ALC. In that litigation, Bebo was represented by her current counsel, the Reinhart Boerner law firm. At that deposition, Bebo's counsel asked Mr. Hennigar questions about ALC's inclusion of employees in the Ventas covenant calculations. In response, Mr. Hennigar testified that he was unaware of the practice until March 2012, when details of Bebo's scheme began coming to light. (*See*, Division's Resp. to Mot. to Compel, March 27, 2015, Ex. 4).

On July 24, 2014, Mr. Hennigar testified in Canada pursuant to a summons issued by the Nova Scotia Securities Commission. Attorneys for the Division participated in that testimony, and asked Mr. Hennigar questions regarding the subject matter of these proceedings. Division attorneys specifically asked Mr. Hennigar to address Ms. Bebo's contentions that he personally approved of,

---

<sup>1</sup> Mr. Rhineland and Dr. Roadman have residences in the United States, and have been served with subpoenas in this matter. Mr. Bell is a resident of Canada who the Division anticipates will voluntarily appear for testimony at the hearing. Additionally, another foreign director, Derek Buntain, may testify at the hearing, depending on his availability.

and was provided details regarding, ALC's inclusion of employees in the covenant calculations.

Again, Mr. Hennigar denied approving or being aware of the practice. (Ex. 1, Hennigar Test. Tr. at 32:7-42:19).

On July 31, 2014, Division attorneys participated in a compelled testimony of Malen Ng, the chair of ALC's audit committee. That testimony took place in Toronto pursuant to a summons issued by the Ontario Securities Commission. Ms. Ng testified that ALC's board was never told that ALC was including large numbers of employees in the covenant calculations. She testified that, at best, she may have been made aware that ALC was including a limited number of employees, but she believed only employees who were actually staying at the Ventas facilities on legitimate company business were being included, and only for the actual length of their stays. Ms. Ng expressly denied Bebo's allegations that the board was provided additional details about the scheme. (Ex. 2, Ng Test. Tr. at 38:2-43:22, 48:23-53:20, 55:4-63:20).

**C. The Court Should Admit the Prior Sworn Statements Pursuant to Rule 235(a)(2)**

Rule 235(a)(2) provides that the Court may grant a motion to introduce a prior sworn statement if "the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement." *See, e.g., In re Robert G. Meeks*, AP File No. 3-9952, 2002 SEC LEXIS 3433, \*14 (Feb. 4, 2002) (admitting prior sworn statement of witness who was outside of the United States); *In re Jordan Peixoto*, AP File No. 3-16184 (Dec. 3, 2014) (same). In such situations, the Commission favors the admission of prior sworn statements of unavailable witnesses that contain relevant evidence. *In re Del Mar Fin. Servs.*, AP File No. 3-9959, 56 S.E.C. 1332, 1349-51 (Oct. 24, 2003) ("in deciding when to admit and whether to rely on hearsay evidence, its probative value, reliability, and the fairness of its use must be considered. In doubtful cases, we have expressed a preference for inclusiveness...we believe that the law judge should have

admitted the investigative transcripts insofar as they contained evidence that was relevant to the issues in this case.”) (citations omitted).

As in these decisions, the Court should admit the testimony transcripts of Mr. Hennigar and Ms. Ng. Their transcripts contain relevant evidence on key issues in this case, including whether and to what extent ALC’s board knew of, and approved, the inclusion of employees in calculating compliance with the Ventas lease covenants.<sup>2</sup> Indeed, without the prior sworn statements, the Division would be constrained in refuting Bebo’s claims that she sought the approval of Mr. Hennigar prior to engaging in her scheme, and that she fully disclosed her practices to Hennigar, Ng, and the other board members. Moreover, given that Bebo has placed the credibility of the directors at issue, the prior sworn statements will appropriately corroborate the trial testimony of Messrs. Bell, Rhineland, and Roadman, who will also deny Bebo’s accusations against them.

The Division has conferred with counsel for Mr. Hennigar and Ms. Ng, and requested that each voluntarily appear in the United States to testify at the hearing. Both witnesses’ attorneys have represented that their clients will not be in the United States at the time of the hearing and, accordingly, will be unable to testify. Further, counsel refused the Division’s request to accept service of a subpoena directed to their clients. Accordingly, the requirements of Rule 235(a)(2) are satisfied.

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<sup>2</sup> The transcripts contain other relevant information, including: (a) the circumstances that led to ALC entering the Ventas lease (Ex. 1 at 20:20-24); (b) Bebo’s assurances to the board, prior to entering the lease, that ALC would meet the Ventas lease covenants (Ex. 1 at 24:3-8; Ex. 2 at 23:12-27:4); (c) Bebo’s conduct after the board confronted her after discovering the extent of ALC’s inclusion of employees (Ex. 1 at 62:24-63:4; 65:10-66:17, 80:10-81:6; Ex. 2 at 81:23-82:18, 98:25-100:25), (d) the materiality of ALC’s statements that it was in compliance with the Ventas lease covenants (Ex. 1 at 25:22-27:4, 30:18-31:18; 63:13-65:5, 73:17-75:8; Ex. 2 at 27:11-28:10, 104:3-105:24), and (e) Bebo’s compensation and bonuses (Ex. 1 at 75:10-76:6; Ex. 2 at 105:25-107:1).

**D. The Court Should Admit the Declaration of Jeannine Hiatt**

Subsequent to the Court's February 6, 2015 Order Granting Motion to Introduce Prior Sworn Statements, the Division received a declaration from Jeannine Hiatt, a former ALC employee. Like the other declarations admitted by the Court's Order, Ms. Hiatt's declaration solely addresses her attendance at the Ventas facilities. (Ex. 3, Hiatt Dec.). Ms. Bebo does not dispute Ms. Hiatt's statements that she never visited one Ventas facility at which Bebo listed her as an occupant, and that Ms. Hiatt never stayed at another. (*Id.*, ¶¶ 3-4). Because the interests of justice do not support requiring Ms. Hiatt to provide live testimony on these narrow and undisputed facts, the Court should admit Ms. Hiatt's declaration pursuant to Rule 235(a)(5).

WHEREFORE, for the foregoing reasons, the Division respectfully requests that the Court admit into the record in these proceedings the prior sworn statements attached hereto as Exhibits 1, 2, and 3.

Respectfully submitted:



Dated: April 2, 2015

---

Benjamin J. Hanauer  
Daniel J. Hayes  
Timothy J. Stockwell  
Scott B. Tandy  
Division of Enforcement  
U.S. Securities and Exchange Commission  
175 West Jackson Blvd, Suite 900  
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**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16293**

**In the Matter of**

**LAURIE BEBO, and**  
**JOHN BUONO, CPA,**

**Respondents.**

**CERTIFICATE OF SERVICE**


Benjamin J. Hanauer, an attorney, certifies that on April 2, 2015, he caused a true and correct copy of the foregoing The Division of Enforcement's Motion to Introduce Prior Sworn Statements of Two Members of ALC's Board of Directors who Reside Outside of the United States to be served on the following by overnight delivery and email:

Honorable Cameron Elliot  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Mark Cameli, Esq.  
Reinhart Boerner Van Deuren S.C.  
1000 N. Water Street, Suite 1700  
Milwaukee, WI 53202

Patrick S. Coffey, Esq.  
Whyte Hirschboeck Dudek S.C.  
161 N. Clark St., Suite 4700  
Chicago, IL 60601

Dated: April 2, 2015

  
\_\_\_\_\_  
Benjamin J. Hanauer  
Division of Enforcement  
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Phone: 312-353-8642  
Fax: 312-353-7398  
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# Exhibit 1

**NOVA SCOTIA SECURITIES COMMISSION**

**IN THE MATTER OF:** An Investigation Order issued pursuant  
to Section 27(1) of the Act

- and -

**IN THE MATTER OF:** A Summons to David J. Hennigar

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**HEARD BEFORE:** Ms. M. Lianne Bradshaw, Chair  
Investigator  
Nova Scotia Securities Commission

**PLACE HEARD:** Nova Scotia Securities Commission  
Enforcement Branch  
Suite 600, 5251 Duke Street  
Halifax, Nova Scotia

**DATE HEARD:** Thursday, July 24, 2014

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**APPEARANCES:** Mr. Benjamin Hanauer  
United States Securities and Exchange  
Commission

Mr. Scott Tandy  
United States Securities and Exchange  
Commission

Ms. Stephanie Atkinson  
Enforcement Counsel  
Nova Scotia Securities Commission

Mr. Theodore Chung  
Ms. Leigh Krahenbuhl  
Ms. Samaneh Hosseini  
Counsel for Mr. Hennigar

---

**Recorded by:**

**Drake Recording Services Limited**

1592 Oxford Street

Halifax, NS B3H 3Z4

Per: Ainslie Moss, Court Reporter

I N D E X   O F   P R O C E E D I N G S                      P A G E   N O .

MR. DAVID JOHN HENNIGAR

Direct Examination by Mr. Hanauer .....9

I N D E X   O F   E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
Ex-691	Summons issued by Nova Scotia Securities Commission, dated July 15, 2014 .....	7
Ex-692	Background questionnaire completed by Mr. Hennigar, dated July 16, 2014 .....	13
Ex-693	Bates Document ALCSEC00043415, containing series of e-mails dated March 16, 2012 .....	63
Ex-694	Bates Document ALCBELL0007647 and 7648, containing an e-mail chain ending with with e-mail to Mr. Hennigar from Mr. Bell, dated March 20, 2012 .....	65
Ex-695	Bates Document GTSEC031712 through 715, containing e-mail to Mr. Hennigar and others from Mr. Bell, dated April 4, 2012 .....	66

I N D E X   O F   E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
Ex-696	Bates Document ALCBELL0006737 through 6742, including ABELL000012 through ABELL000017 and e-mail to Mr. Hennigar and others from Mr. Bell, dated April 26, 2012 .....	68
Ex-697	Bates Document ALC45535 through 5538, containing ALC board of directors meeting minutes, dated May 15, 2012 .....	70

1 (HEARING OPENS)

2 THE CHAIR: Good morning, everybody. Thank  
3 you for all being here. Today is July 24th, 2014. This is  
4 Lianne Bradshaw, an investigator with the Nova Scotia  
5 Securities Commission. We're here in the offices of the  
6 Enforcement Branch, Suite 600, 5251 Duke Street in Duke  
7 Tower. It's about 10 after 11:00 this morning, and we have  
8 a number of people here today for testimony.

9 This is our File 2014-042, and my last name  
10 is Bradshaw, B-r-a-d-s-h-a-w. And we're just going to go  
11 around and everyone is going to introduce themselves, spell  
12 their last name, and we'll just start here.

13 MR. HANAUER: Benjamin Hanauer, H-a-n-a-u-e-  
14 r, of the United States Securities and Exchange Commission.

15 MR. TANDY: Scott Tandy, for the United  
16 States Securities and Exchange Commission, T as in "Tom" a-  
17 n-d-y.

18 MS. ATKINSON: Stephanie Atkinson,  
19 enforcement counsel for the Nova Scotia Securities  
20 Commission, A-t-k-i-n-s-o-n.

21 MR. HENNIGAR: David Hennigar, H-e-n-n-i-g-  
22 a-r.

23 MR. CHUNG: Theodore Chung, C-h-u-n-g, with  
24 the law firm Jones Day on behalf of Mr. Hennigar.

25 MS. KRAHENBUHL: Leigh Krahenbuhl, K-r-a-h-

1 e-n-b-u-h-l, from the law firm of Jones Day on behalf of  
2 Mr. Hennigar.

3 **MS. HOSSEINI:** Sam Hosseini, H-o-s-s-e-i-n-  
4 i, from Stikeman Elliott on behalf of Mr. Hennigar.

5 **THE CHAIR:** Thank you. Thank you, everyone.  
6 Mr. Hennigar, you're here pursuant to a summons ordered --  
7 I'm sorry, you're here pursuant to an investigation ordered  
8 by the Commission. I don't have a copy of it. Someone has  
9 a copy of it down there.

10 **MS. ATKINSON:** Dated July 9th.

11 **THE CHAIR:** Dated July 9th. Thank you.

12 **MS. ATKINSON:** 2014.

13 **THE CHAIR:** 2014. Pursuant to that order a  
14 summons was issued the 15th day of July 2014 by myself to  
15 Mr. Hennigar. And, Mr. Hennigar, I have an affidavit of  
16 service from a Mr. Kevin Toole that he did serve you on  
17 July 16th, 2014, at 6:05 p.m. Is that correct?

18 **MR. HENNIGAR:** I guess, somewhere close to  
19 that, yes.

20 **THE CHAIR:** Okay. I won't hold you to the  
21 time, but he says he served you on that date. So, we're  
22 going to enter the summons as an exhibit, and we're going  
23 to begin with Exhibit 691. There you go.

24 EXHIBIT NO. 691 (ENTERED) - SUMMONS ISSUED BY NOVA SCOTIA  
25 SECURITIES COMMISSION, DATED JULY 15, 2014

1           **THE CHAIR:** Ms. Atkinson, I understand you  
2 have something to put on the record.

3           **MS. ATKINSON:** I'd just like to confirm for  
4 the record ---

5           **COURT REPORTER:** Sorry, could I get you to  
6 speak into the record.

7           **MS. ATKINSON:** I'm sorry. I'll just confirm  
8 for the record that this examination is being conducted  
9 pursuant to an investigation order that was issued under  
10 Section 27 of the **Nova Scotia Securities Act**. The Nova  
11 Scotia Securities Commission is bound by the act and its  
12 use of any testimony and evidence given here today, and in  
13 particular by Sections 29(A) and 29(A)(A) of the **Securities**  
14 **Act**. Okay.

15           **THE CHAIR:** Thank you.

16           **MS. ATKINSON:** I will leave now. If anybody  
17 needs me ---

18           **THE CHAIR:** Okay. At this time I'm going to  
19 turn the examination over to my colleagues with the SCC,  
20 and they can begin. Thank you.

21           **MR. TANDY:** Ben, were you going to make  
22 something of record? Because Sam also wanted to mention  
23 something as well prior to the evidence.

24           **MR. HANAUER:** Very well. Counsel, would you  
25 like to state whatever you'd like for the record

1                   **MS. HOSSEINI:** Sure. For the record, Mr.  
2 Hennigar relies on the **Canada Evidence Act** and the **Nova**  
3 **Scotia Evidence Act** and the protections offered under those  
4 statutes.

5                   **MR. HANAUER:** And the SCC will note for the  
6 record that it intends to honour its commitments and  
7 agreements with the Nova Scotia Securities Commission in  
8 regards to these proceedings. Do you need to swear the  
9 witness in?

10                   **COURT REPORTER:** Yes. Would you prefer to  
11 swear on the Bible or take an affirmation without the  
12 Bible?

13                   **MR. HENNIGAR:** No, I'll do the Bible.

14 \_\_\_\_\_  
15 **MR. DAVID JOHN HENNIGAR, (Sworn):**

16                   **COURT REPORTER:** State your full name for  
17 the record, please.

18                   **THE WITNESS:** David John Hennigar, H-e-n-n-  
19 i-g-a-r.

20                   **COURT REPORTER:** Thank you.

21 **--- DIRECT EXAMINATION BY MR. HANAUER:**

22                   **Q.** Good morning, Mr. Hennigar. My name is  
23 Ben Hanauer, to my left is Scott Tandy, we are officers of  
24 the United States Securities and Exchange Commission for  
25 the purposes of these proceedings, the SCC is investigating



1 this matter in an investigation entitled "In the Matter of  
2 Assisted Living Concepts Inc.", Investigation No. C7948.  
3 The purpose of that investigation is to determine whether  
4 there have been violations of certain provisions of the  
5 United States federal securities laws.

6                   However, the facts developed in the SCC's  
7 investigation might constitute violations of other federal  
8 or state civil or criminal laws. Prior to the opening of  
9 the record you were provided with a copy of the SCC's  
10 formal order of investigation in this matter. It will be  
11 available for your examination during the course of this  
12 proceeding. Sir, have you had the opportunity to review  
13 the formal order?

14                   A. I have.

15                   Q. Thank you. And prior to the opening of  
16 the record you were provided with a copy of the  
17 Commission's Supplemental Information Form, Form 1662, and  
18 a copy of that document has previously been marked as SCC  
19 Exhibit 1. Have you had the opportunity to read Exhibit 1?

20                   A. Yes, sir.

21                   Q. And do you have any questions concerning  
22 that document?

23                   A. No, sir.

24                   Q. Mr. Hennigar, are you represented by  
25 counsel here today?

1                   A. Yes, sir.

2                   MR. HANAUER: And, Mr. Chung, are you  
3 representing Mr. Hennigar as his attorney?

4                   MR. CHUNG: I am.

5                   COURT REPORTER: Sorry, Mr. Chung, could you  
6 turn that mike back towards yourself.

7                   MR. CHUNG: Yes. Yes, I am representing Mr.  
8 Hennigar.

9                   MR. HANAUER: And, counsel, are you  
10 representing Mr. Hennigar as well?

11                   MS. HOSSEINI: Yes.

12 --- BY MR. HANAUER:

13                   Q. And, Mr. Hennigar, the court reporter  
14 previously marked as Exhibit 691 a summons that was issued  
15 to you by the Nova Scotia Securities Commission.

16                   A. Yes.

17                   Q. And are you appearing today pursuant to  
18 the summons, being Exhibit 691?

19                   A. Yes, sir.

20                   Q. Thank you. And I just want to go over  
21 some introductory matters before we start. Everything  
22 today is being recorded by the court reporter and will be  
23 transcribed into a written transcript. It's also my  
24 understanding these proceedings are being recorded by  
25 video. We'd like you to be as clear as possible so the

1 court reporter can take down everything you say, and when  
2 you provide an answer I'd like you to answer to the best of  
3 your knowledge. Is that all right?

4 A. That is good.

5 Q. And if you don't understand a question  
6 that I've asked you, please let me know, okay?

7 A. I will.

8 Q. And if you can't hear one of my  
9 questions, just let me know and ask me to repeat it.

10 A. Will do.

11 Q. And if you do answer a question, I will  
12 assume that you understood the question I asked, okay?

13 A. Thank you.

14 Q. And just because we have a court  
15 reporter it's important that you let me finish my question  
16 before you answer, and I will try to do my best to let you  
17 finish your answer before I answer -- I ask you another  
18 question, okay?

19 A. I'll try.

20 Q. Thank you. And then, finally, if you  
21 need to take a break for any reason at all, just let me  
22 know and I will ask the court reporter to go off the  
23 record, okay?

24 A. Thank you.

25 Q. Mr. Hennigar, is there anything that

1 will impair your ability to give testimony today?

2 A. No.

3 Q. Are you currently taking any medications  
4 or do you have a medical condition that would affect your  
5 memory?

6 A. No.

7 EXHIBIT NO. 692 (ENTERED) - BACKGROUND QUESTIONNAIRE

8 COMPLETED BY MR. HENNIGAR, DATED JULY 16, 2014

9 --- BY MR. HANAUER:

10 Q. Mr. Hennigar, I'm handing you a document  
11 that's been marked as SCC Exhibit 692.

12 A. Yes.

13 Q. And do you recognize Exhibit 692 as a  
14 background questionnaire that you completed on  
15 approximately July 16th, 2014?

16 A. I do.

17 Q. And did you provide the answers to  
18 Exhibit 692?

19 A. I did.

20 Q. And are your answers that you provided  
21 in 692 truthful and accurate?

22 A. To the best of my knowledge.

23 Q. And are there any additions or revisions  
24 to 692 that you'd like to state for the record?

25 A. None at this point.

1 Q. It's my understanding that you were the  
2 chairman of a company called Assisted Living Concepts Inc.

3 A. I have been, yes.

4 Q. And I will refer to Assisted Living  
5 Concepts Inc. as "ALC". Do you understand that?

6 A. I do.

7 Q. And approximately during what time  
8 period were you the chairman of ALC's board of directors?

9 A. From the point in time at which ALC and  
10 Extendicare were split, which was just shortly after the  
11 Halloween budget that the federal minister brought in that  
12 outlawed most of the provisions on which -- for which we  
13 had done the transaction.

14 Q. And that was in the mid-2000s?

15 A. That was, I believe, in 2006.

16 Q. And you were the chairman of ALC's board  
17 of directors from 2006 continuing through 2013, is that  
18 correct?

19 A. That should be correct. It's in this  
20 document. The dates are in here, on the last page. Sorry,  
21 2013 -- yeah, 2006, November of 2006, to July of 2013.

22 Q. That was the period of time you were ---

23 A. Which I was chairman, yes.

24 Q. Did you have any other positions at ALC  
25 other than the chairman of the board of directors?

1                   A. None.

2                   Q. And did you sit on any committees at  
3 Assisted -- at ALC?

4                   A. No.

5                   Q. Can you -- did you attend committee  
6 meetings?

7                   A. As a rule, yes.

8                   Q. Which -- did you -- was it your practice  
9 to attend all of the committee meetings for ALC's various  
10 board of director committees?

11                   A. I attempted to attend them all, yes.

12                   Q. And I take it you attended ALC's  
13 quarterly board of directors meetings?

14                   A. Yes, all of them.

15                   Q. And did the committee meetings -- was --  
16 did those meetings typically take place in the presence of  
17 the full board of directors?

18                   A. It depended on the committee. The audit  
19 committee, after probably the first year all members of the  
20 board were invited to sit in on the audit committee even if  
21 they were not a member of the audit committee in the  
22 interest of expediency of time and to inform them of the  
23 detail. The HR committee tended to meet only as members of  
24 the HR committee.

25                   Q. But it sounds like for the audit

1 committee it -- typically the full board of directors would  
2 attend?

3 A. After the first year or so, yes.

4 Q. And how would you describe your  
5 responsibilities as chairman of ALC's board of directors?

6 A. Normal duties of a chairman, that is to  
7 make sure that the agenda for the meeting is properly  
8 reflecting the things that need to be discussed and making  
9 sure that the harmony of the board, insofar as is possible,  
10 was looked after and I was sensitive to it, yes, and also  
11 to conduct the annual meetings.

12 Q. And it's my understanding that during  
13 the period you were the chairman of the -- ALC's board of  
14 directors that your family and their businesses owned a  
15 controlling voting share of ALC's common stock. Is that  
16 accurate?

17 A. Initially that would not be accurate.  
18 I'm guessing sometime around 2009/2010, because various of  
19 the multi-vote share were converted into low-vote shares --  
20 10 to 1 was the ratio -- and with the buy-back program that  
21 we had in place at the company, the Scotia Investments  
22 Group of Companies would have crossed over into a control  
23 position.

24 Q. And the Scotia Group of ---

25 A. Of votes, that is, not of equity.

1 Q. So, at some point around 2009 or 2010  
2 your family's companies at that point became -- controlled  
3 the majority of the voting shares of ALC stock?

4 A. Yes, they always controlled the majority  
5 of the voting shares, but the number of votes changed from  
6 under 50 percent to over 50 percent.

7 Q. And I imagine that the precise  
8 information about your family's businesses' voting control  
9 of ALC's stock would be reflected in ALC's filings with the  
10 US Securities and Exchange Commission?

11 A. It will all be there, yes.

12 Q. And it looks like during the period 2009  
13 to 2011, which I'm most interested in today, you were --  
14 you served on a variety -- the board of a variety of  
15 companies.

16 A. A number of other companies, yes.

17 Q. And were you an officer of any companies  
18 during that time period as well?

19 A. Yes.

20 Q. Do you know approximately how many?

21 A. Well, if you give me the list I'll go  
22 through them for you. That's probably the easiest way.

23 MR. CHUNG: And, Ben, are you -- you're  
24 talking both public and private, no restriction?

25 MR. HANAUER: No -- any company.



1 --- BY THE WITNESS:

2 A. Oh? Now you got me. Anyway, let me  
3 start ---

4 Q. And I'm just asking you to approximate,  
5 sir.

6 A. Yeah, let me start. I'm the director  
7 and the chairman of a company called Aquarius Coatings, I'm  
8 chairman of High Liner and also -- High Liner Foods Inc.,  
9 and also the chairman of the executive committee during  
10 that period, Landmark Global Financial Corporation, I was a  
11 director and the chairman.

12 Muskrat Minerals, I was a director and the  
13 chairman, a director of MedX Health Corporation and a  
14 member of the audit committee, and a director and a member  
15 of the audit committee of Solution Inc. Technologies  
16 Limited. Those are the public companies during that  
17 period.

18 Q. And I won't ask you the names of them,  
19 but were you also a director of any private companies  
20 during this period?

21 A. Yes, I would have been a director of  
22 probably plus or minus 50 companies. Most of those were  
23 family companies, most of which held investment portfolios.

24 Q. So, just based on the sheer number of  
25 companies of which you were a director during the 2009/2011

1 time period, would it be accurate to say that being  
2 chairman of ALC was only a small portion of your total  
3 corporate responsibilities?

4 A. That would be correct.

5 Q. And it's my understanding that Ms.  
6 Laurie Bebo was the chief executive officer of ALC.

7 A. Yes, during that timeframe.

8 Q. And it's -- she reported to ALC's board  
9 of directors?

10 A. That is correct.

11 Q. And it's my understanding that Mr. Mel  
12 Rhinelanders served as a liaison between Ms. Bebo and the  
13 board of directors. Is that accurate?

14 A. I don't know if I'd qualify it that way.  
15 Mel and I had an understanding that he would be the lead  
16 person on things that dealt with health care issues,  
17 because she had reported to him prior to that point in time  
18 and he was very knowledgeable about the industry issues,  
19 more so than I.

20 And since he had that relationship with her  
21 it was appropriate, in my view, that he do the -- that type  
22 of contact for us. So, I mean, he then reported -- she  
23 reported to the board, he didn't report to the board on any  
24 -- on her behalf per se.

25 Q. But it's my understanding that if Ms.

1 Bebo had questions for the board that did not come up in  
2 the context of the quarterly meetings that typically she  
3 would direct her communications with Mr. Rhineland.

4 A. That would be correct.

5 Q. And that was an arrangement that the  
6 board was aware of and had approved?

7 A. Yes. Um-hmm.

8 Q. I want to talk about the lease that ALC  
9 entered with Ventas regarding eight properties in the sub-  
10 Eastern United States. Are you familiar with that lease?

11 A. In very broad-brush terms, yes.

12 Q. And if it's okay with you, I'm going to  
13 refer to those eight properties covered by the lease as the  
14 CaraVita properties.

15 A. That's fine.

16 Q. And you understand what I'm talking  
17 about?

18 A. I understand what you're talking about,  
19 yes.

20 Q. So, when did you learn that ALC was  
21 considering leasing the CaraVita properties from Ventas?

22 A. At a point in time when Ms. Bebo brought  
23 it to the board as an issue that she wanted to pursue and  
24 to complete.

25 Q. And does early to mid 2007 sound like an

1 accurate timeframe?

2 A. That's, I think, the right time, yes.

3 Q. And whose idea was it for ALC to lease  
4 the CaraVita properties from Ventas? Who came up with that  
5 proposal?

6 A. I couldn't tell you.

7 Q. Was ---

8 A. All I can tell you is it wasn't me.

9 Q. Did it -- was Ms. Bebo an advocate for  
10 leasing the CaraVita properties from Ventas?

11 A. She was the principal advocate and  
12 proponent of it, yes.

13 Q. So, she was the strongest advocate for  
14 entering the lease amongst ALC's management?

15 A. Yes.

16 Q. And do you know ---

17 A. At least insofar as it was presented to  
18 the board. I mean, I don't know what went on on the staff  
19 side of it but ---

20 Q. And based on your interactions with Ms.  
21 Bebo do you know why she wanted ALC to lease the CaraVita  
22 properties from Ventas?

23 A. I could make my educated guess as to why  
24 she did, but no, I couldn't tell you specifically what was  
25 in her mind. I mean, basically what she was charged with

1 was growing the company, growing the revenues and  
2 consequently the earnings, and from that flow benefits to  
3 shareholders and to the management team who had stock bonus  
4 plans and other bonus plans.

5 Q. And when Ms. Bebo advocated to the board  
6 of directors leasing the CaraVita properties, did she cite  
7 reasons such as growing the company and growing revenues as  
8 reasons for leasing the properties?

9 A. I'm sure she did, but I can't remember  
10 specifically the details of that meeting.

11 Q. You have a general recollection of her,  
12 Ms. Bebo, citing the growth and revenue as reasons for  
13 entering the lease?

14 A. I'm sure that was part of it, yes.

15 Q. And did you personally review the lease  
16 with Ventas before ALC entered it?

17 A. No.

18 Q. I take it that -- were you briefed on  
19 certain portions of the lease?

20 A. The board was briefed on the key issues  
21 and, I believe, presented with some kind of a memo that  
22 dealt with the acquisition.

23 Q. And at the time the board was presented  
24 with information when it was considering leasing the  
25 CaraVita properties were you -- was the board made aware

1 that the lease contained occupancy and coverage ratio  
2 covenants?

3 A. Yes, sir.

4 Q. And was the board made aware that there  
5 were penalties for violating the occupancy and coverage  
6 ratio covenants in the lease?

7 A. They were.

8 Q. And was it management that briefed the  
9 board on this issue?

10 A. Management would have briefed the board,  
11 yes, and I'm pretty certain there was a written document.

12 Q. And did you have a view on whether ALC  
13 should enter the lease?

14 A. I was supportive of management, because  
15 if they brought it forward I was prepared to support their  
16 view.

17 Q. Was there anyone on the board of  
18 directors who was opposed to the lease?

19 A. Opposed, no. In the final analysis, two  
20 directors abstained from voting in favour of it and voiced  
21 their concerns relative to the fact that they felt that it  
22 presented too big a risk in that the covenants could be  
23 violated.

24 Q. And who were the directors that voiced  
25 those concerns?

1                   A. There were two directors, Derek Buntain  
2 and Alan Bell.

3                   Q. And do you recall how Ms. Bebo reacted  
4 to Mr. Bell and Mr. Buntain voicing their concerns?

5                   A. Well, she tried to reassure them that  
6 things were -- would work out all right, and as an outcome  
7 of that I requested that the board be updated quarterly on  
8 the covenants going forward.

9                   Q. And going forward, after ALC entered the  
10 lease, management in fact would update the board on ALC's  
11 compliance with the covenants in the Ventas lease?

12                   A. That is correct.

13                   Q. Do know if ALC attempted to do anything  
14 to modify the terms of the lease before it entered the  
15 lease with Ventas?

16                   A. I think at one point there were some  
17 discussions between ALC and Ventas about a couple of  
18 properties that Ventas wanted to either sell or add to that  
19 transaction in New Mexico, and whether the terms of the  
20 existing lease were discussed as part of that I couldn't  
21 tell you.

22                   Q. Okay. And do you recall any additional  
23 discussions by ALC's board of directors regarding the issue  
24 of whether or not to enter the lease with Ventas?

25                   A. No.

1 Q. So, I believe you just testified that at  
2 the quarterly board meetings management would report to the  
3 board on ALC's compliance with the occupancy and coverage  
4 ratio covenants. Is that correct?

5 A. That is correct, and it was also in the  
6 documentation that was sent out in advance of that meeting.

7 Q. And when I mention the term "management"  
8 do you understand that to include Ms. Bebo and Mr. Buono?

9 A. Yes.

10 Q. Mr. Buono is the chief financial  
11 officer?

12 A. He was at that time, yes.

13 Q. And at any time prior to March 2012 did  
14 management ever report to the board that ALC was not in  
15 compliance with the occupancy or coverage ratio covenants  
16 in the Ventas lease?

17 A. I certainly am not aware of anything  
18 that was reported in that way.

19 Q. Mr. Hennigar, I'm handing you a document  
20 that's previously been marked as Commission Exhibit 126.

21 A. Yes.

22 Q. And Exhibit 126, does that appear to be  
23 an accurate copy of the minutes of ALC's board of directors  
24 meeting for August 6, 2008?

25 A. I would say so, although I don't see my



1 signature on them.

2 Q. I'd refer you to the last page of  
3 Exhibit 126.

4 A. Right.

5 Q. And do you see the signature of Eric  
6 Fonstad?

7 A. I do.

8 Q. And was -- did he take the minutes of  
9 this board meeting, to the best of your knowledge?

10 A. Yes.

11 Q. I'd like to refer you to page 4 of  
12 Exhibit 126. And do you see the paragraph that reads:

13 "The chairman requested that management  
14 present a report on covenant compliance  
15 at the next regularly scheduled meeting  
16 of the board"?

17 A. I do.

18 Q. And, in fact, did you request at this  
19 board meeting that management report on covenant compliance  
20 in regards to the Ventas lease?

21 A. Obviously, I must have.

22 Q. You have no reason to believe you didn't  
23 say that?

24 A. No.

25 Q. And that directive would have been

1 consistent with your prior instructions to management to  
2 keep -- to report to the board on a quarterly basis  
3 compliance with the covenants in the Ventas lease?

4 A. Yes.

5 Q. Mr. Hennigar, I'm handing you a document  
6 that's been marked previously as SCC Exhibit 130.

7 A. Yes.

8 Q. And do you see how -- do you recognize  
9 Exhibit 130?

10 A. No, not particularly, but it's a long  
11 time ago at this point.

12 Q. Okay. Do you see how Exhibit 130 was --  
13 is a memo from John Buono to ALC's board of directors dated  
14 October 27th, 2008?

15 A. I do.

16 Q. And do you have any reason to believe  
17 that you did not receive this memo sometime after October  
18 27th, 2008?

19 A. No, none whatsoever.

20 Q. So, I want to refer you to a couple  
21 statements in Exhibit 130. The first is the first sentence  
22 in the second full paragraph. It reads:

23 "Occupancy has declined in the  
24 portfolio since its purchase January 1,  
25 2008, leading to questions at the

1 August 5, 2008 meeting of the audit  
2 committee about the implications of any  
3 non-compliance with covenants in the  
4 lease and guarantee."

5 Do you see that?

6 A. Yes, sir.

7 Q. And were you aware around this time,  
8 late 2008, that occupancy had declined at the CaraVita  
9 facilities since January of 2008?

10 A. Obviously, yes.

11 Q. And the last sentence of that paragraph  
12 in Exhibit 130 reads:

13 "In general, breach of any of the  
14 occupancy or financial coverage  
15 covenants would entitle Ventas to  
16 terminate the lease as to all or some  
17 of the properties and require payment  
18 of the present value of unpaid future  
19 rental amounts."

20 A. I see that, yes.

21 Q. And you were aware of that in late 2008?

22 A. Yes.

23 Q. And, to the best of your knowledge, the  
24 board was aware of that?

25 A. Yes.

1 Q. And, to the best of your knowledge, Ms.  
2 Bebo was aware of that?

3 A. Yes.

4 Q. These were items that were discussed at  
5 ALC's board meetings?

6 A. I mean, there was nothing that went out  
7 that she wouldn't have vetted.

8 Q. Mr. Hennigar, I'm handing you a document  
9 that's previously been marked as SCC Exhibit 198.

10 A. Yes.

11 Q. And does Exhibit 198 appear to be an  
12 accurate copy of the minutes of ALC's board of directors  
13 meeting minutes for November 3rd, 2008?

14 A. I would assume so, although again  
15 they're just signed by Mr. Fonstad. I mean, once they're  
16 approved by the board I sign them as well.

17 Q. Oh, okay. But do you have any reason to  
18 believe that this ---

19 A. I have no reason to believe it isn't,  
20 but I'm just telling you what ---

21 Q. Thank you for that clarification.

22 A. Okay.

23 Q. And I want to refer you to page 4 of  
24 Exhibit 198. The second full paragraph discusses the  
25 CaraVita lease and it references a report by Ms. Bebo. The

1 last few sentences read:

2 "Ms. Bebo outlined structured plans to  
3 improve occupancy at the buildings and  
4 reported on staffing changes in the  
5 region. In response to questions from  
6 the directors, she outlined the  
7 company's plans to address covenant  
8 compliance."

9 What do you recall about what Ms. Bebo said  
10 about her efforts to improve occupancy at the CaraVita  
11 facilities or to ensure compliance with the covenants in  
12 the Ventas lease?

13 A. I'm afraid at this point in time I can't  
14 help you. I don't remember.

15 Q. Mr. Hennigar, I'm handing you a document  
16 that's previously been marked as SCC Exhibit 132.

17 A. Yes.

18 Q. And does Exhibit -- subject to it not  
19 being -- bearing your signature, does Exhibit 132 appear to  
20 be an accurate copy of the minutes of ALC's December 16th,  
21 2008 board of directors meeting?

22 A. Yes. I see they're signed by Mr.  
23 Fonstad.

24 Q. And I want to refer you to the last page  
25 of Exhibit 132.

1           A. Yes.

2           Q. And the third full paragraph reads:

3                    "In response to a question from the  
4                    chairman, Ms. Bebo reported that all  
5                    covenants under the CaraVita lease will  
6                    be met as of the end of the year. She  
7                    reported on discussions with the  
8                    landlord regarding operation of the  
9                    facilities and covenant compliance."

10           Do you recall what Ms. Bebo said about  
11   discussions with Ventas regarding covenant compliance at  
12   those -- at the CaraVita facilities?

13           A. I'm afraid I can't help you with that at  
14   this point. That's five years ago, six years ago.

15           Q. Do you generally recall Ms. Bebo telling  
16   the board that ALC was in compliance with its covenants  
17   under the Ventas lease?

18           A. Yes. She never reported otherwise.

19           Q. So, I want to shift gears.

20           MR. HANAUER: Oh, excuse me.

21           MR. TANDY: This is Mr. Tandy. Did she ever  
22   express concern to you after November 3rd, 2008 that ALC  
23   would miss the occupancy covenants?

24           THE WITNESS: No, she did not.

25   --- BY MR. HANAUER:

1 Q. How did you become aware of the concept  
2 that ALC was including its employees in the occupancy  
3 calculations regarding the Ventas covenants?

4 A. That would have been on the -- just  
5 before the meeting of the HR committee and the board in  
6 March, I believe it was the 6th, of 2012.

7 Q. So, March 2012 was the first time you  
8 became aware that ALC was including employees in its  
9 covenant calculations regarding the Ventas lease?

10 A. That is correct.

11 Q. A slightly different question, not  
12 involving the covenant calculations but regarding employees  
13 staying at the facilities. During the 2009 to 2011  
14 timeframe were you aware that ALC employees were staying at  
15 certain of its assisted living facilities in the course of  
16 their employment at ALC?

17 A. I was not.

18 Q. And this is not a question -- just to  
19 clarify, this is not bound by the -- just the Ventas or the  
20 CaraVita facilities, but were you -- were there any board  
21 discussions about the issue of ALC sending its employees to  
22 these facilities and having them stay there instead of  
23 hotels?

24 A. Yes.

25 Q. Can you describe the board discussions

1 on that point.

2           A. I can't be specific. I just remember  
3 that there was a discussion that took place, and the  
4 suggestion was that we would save money on hotel occupancy  
5 if we had people that were visiting in an area stay at the  
6 nursing home.

7           Q. So, the general discussion involved if  
8 ALC employees were travelling, that instead of staying in  
9 hotels they could spend the night at any of ALC's  
10 properties?

11          A. Right.

12          Q. And do you recall when this discussion  
13 was amongst ALC's board?

14          A. I can't give you a specific timeframe.  
15 It was certainly prior to that, so sometime -- maybe a year  
16 or two before that.

17          Q. Sometime prior -- a year or two prior to  
18 March 2012?

19          A. Right.

20          Q. And was this Ms. Bebo's idea, that the  
21 employees who travelled to various ALC facilities stay  
22 there instead of hotels?

23          A. I don't believe so, no. I think this  
24 was one of the board members, but who it was I couldn't  
25 help you with.



1           Q. And these board discussions about ALC  
2 employees staying at properties in lieu of going to hotels,  
3 were these discussions tied into or specified in any way  
4 towards the CaraVita facilities?

5           A. No.

6           Q. And were these discussions in any way  
7 tied or linked to the covenants in the Ventas lease?

8           A. No.

9           Q. So, I want to generally describe to you  
10 a statement that Ms. Bebo has made about discussions with  
11 certain board members and I want to just ask you to respond  
12 to what she said, okay? Ms. Bebo testified in substance  
13 that prior to a February 2009 board meeting she had a  
14 meeting in her office with Mr. Buono and Mr. Rhineland  
15 and another employee and she says that at that meeting she  
16 informed Mr. Rhineland that ALC will have challenges  
17 meeting its covenants in the Ventas lease and that there  
18 would be two options going forward.

19           The first would be to negotiate the issue  
20 with Ventas, and then the second issue -- the second option  
21 would be to include in the covenant calculations employees  
22 who were staying at the CaraVita facilities. Ms. Bebo  
23 further testified in substance that after being presented  
24 with these options Mr. Rhineland leaves her office and  
25 goes to see you in the boardroom next door, that you and

1 Mr. Hennigar discuss those two options ---

2 MR. TANDY: Mr. Rhinelanders.

3 --- BY MR. HANAUER:

4 Q. --- or, I'm sorry, Mr. Rhinelanders  
5 --discuss those two options and you tell Mr. Rhinelanders  
6 that you would prefer that Ms. Bebo go with the option of  
7 including employees in the covenant calculations. Did a  
8 conversation along those lines ever take place between you  
9 and Mr. Rhinelanders?

10 A. Never.

11 Q. And Ms. Bebo additionally testified in  
12 substance that at a February 23rd, 2009 board meeting that  
13 you say, at the board meeting, that the board has already  
14 gone over the option of including employees staying at the  
15 CaraVita properties in the covenant calculations, "So, we  
16 don't need to go into any more details about that." Did  
17 you ever say that at a board meeting?

18 A. No, because I'd have no foundation for  
19 saying that.

20 Q. And Ms. Bebo further testified that you  
21 said in regards to including employees in the covenant  
22 calculations something along the lines of, "We've already  
23 discussed this matter and the board is fine with it." Did  
24 you ever say anything along those lines?

25 A. No, because Ms. Bebo was always in the

1 board meetings, unless she was excluded when something was  
2 taking that was relative to her compensation.

3 Q. And at that time in February 2009 it  
4 sounds like, based on your testimony, that you had never  
5 heard of the idea of including ALC employees in the Ventas  
6 covenant calculations. Is that correct?

7 A. That is correct, and I would be -- I was  
8 very sensitized to that whole issue because of the division  
9 of the board on the question of the acquisition. So, I was  
10 -- you know, a lot of things I won't remember but that  
11 would be something that is important to me.

12 Q. Mr. Hennigar, I'm handing you a document  
13 that's previously been marked as Exhibit 199, and I want to  
14 refer you to the second page of Exhibit 199, the February  
15 4th, 2009 e-mail from Ms. Bebo to Joseph Solari.

16 A. I see it, yes.

17 Q. Ms. Bebo has testified that she showed  
18 that e-mail to Mr. Rhinelanders prior to the February ALC  
19 board meeting. When was the first time you saw a copy of  
20 Exhibit 199?

21 A. It would be at the -- just before the HR  
22 committee meeting -- or, sorry, the day after the HR  
23 committee meeting, rather. It would be March 7th, 2012.

24 Q. So, you didn't see this e-mail from Ms.  
25 Bebo to Mr. Solari until March 2012, correct?

1                   A. That is correct.

2                   Q. And in regards to the second-to-last  
3 paragraph, the one that begins:

4                                "In addition to the potential hospice  
5 lease, we're also confirming our  
6 notification of our rental of rooms to  
7 employees."

8                   Was March 2012 the first time that you were  
9 made aware of the substance of that portion of the e-mail  
10 in Exhibit 199?

11                   A. That is correct.

12                   Q. Mr. Hennigar, I'm handing you a document  
13 that's previously been marked as Exhibit 136. And, again,  
14 subject to your signature not being on the document, does  
15 Exhibit 136 appear to be an accurate copy of ALC's board  
16 meeting minutes for the February 23rd, 2009 board of  
17 directors meeting?

18                   A. I would say yes.

19                   Q. And I want to refer you to the last  
20 sentence on page 2 that spills over onto page 3.

21                   A. Yes.

22                   Q. And do you see how it references --  
23 Exhibit 136 states that Ms. Bebo reported that management  
24 may seek some relief from certain of the covenants in  
25 connection with the request from the landlord that the

1 company -- that ALC consider the purchase of two unrelated  
2 residences?

3 A. I do.

4 Q. And do you have a general recollection  
5 of Ms. Bebo telling the board that management may try and  
6 seek certain relief of some of the covenants in the Ventas  
7 lease from Ventas?

8 A. Yes. I think this is relative to the  
9 New Mexico homes.

10 Q. And it was your understanding -- and Ms.  
11 Bebo, she told the board that in connection with a  
12 potential transaction involving the New Mexico properties  
13 that she would attempt to negotiate with Ventas to seek  
14 relief under the occupancy covenants in the Ventas lease?

15 A. If it says so here, I'm sure she did,  
16 yes.

17 Q. And in connection with Ms. Bebo's report  
18 to the board at the February 23rd, 2009 board meeting did  
19 Ms. Bebo say anything to the board about Ventas agreeing to  
20 allow ALC employees to be included in the covenant  
21 calculations?

22 A. Not to my knowledge.

23 Q. Thank you. I want to ask you a series  
24 of questions based on things that Ms. Bebo has testified  
25 that the -- that she had informed the board. And all these

1 questions relate to a timeframe prior to March 2012, okay?

2 A. Okay.

3 Q. Prior to March 2012 did Ms. Bebo ever  
4 tell the board of directors that Ventas had agreed to  
5 include employees or non-residents in the covenant  
6 calculations?

7 A. She did not to my knowledge.

8 Q. And did she ever tell the board the ALC,  
9 in fact, was including employees in the covenant  
10 calculations?

11 A. She did not tell me, and the board, I'm  
12 sure, was unaware of that.

13 Q. Did Ms. Bebo tell the board that Ventas  
14 had agreed that any person could be included in the  
15 covenant calculations so long as they had a reason to go to  
16 the properties as opposed to actually going there?

17 A. No, she didn't.

18 Q. Did ALC -- or, I'm sorry, did Ms. Bebo  
19 ever tell ALC's board prior to March 2012 that ALC was  
20 including in the covenant calculations people who did not  
21 actually visit the CaraVita properties?

22 A. No, she did not.

23 Q. During that time -- prior to March 2012  
24 did Ms. Bebo tell the board that ALC was including in the  
25 covenant calculations the same people at multiple CaraVita

1 properties over the same time period?

2 A. No, she did not.

3 Q. Prior to March 2012 did Ms. Bebo tell  
4 the board the ALC was including in the covenant  
5 calculations non-employees of -- people that weren't  
6 employees of ALC and who weren't residents of the CaraVita  
7 facilities?

8 A. No, she did not.

9 Q. Did Ms. Bebo ever tell the board prior  
10 to March 2012 that ALC was including in the covenant  
11 calculations former employees that had been fired by ALC?

12 A. She did not.

13 Q. Did she tell the board the ALC was  
14 including in the covenant calculations prospective  
15 employees who had not yet been on-boarded by ALC?

16 A. She did not.

17 Q. Did she tell the board -- Ms. Bebo tell  
18 the board that ALC was including Ms. Bebo's husband, her  
19 husband's friend and Ms. Bebo's parents in the Ventas  
20 covenant calculations?

21 A. She did not.

22 Q. Did Ms. Bebo tell the board that she was  
23 including in the covenant calculations relatives of one of  
24 her friends?

25 A. She did not.

1 Q. Prior to March 2012 did Ms. Bebo tell  
2 the board about how ALC performed its internal financial  
3 accounting for employees included in the covenant  
4 calculations?

5 A. She did not.

6 Q. Prior to March 2012 did Ms. Bebo tell  
7 the board that Ventas had agreed that there was no limit on  
8 the number of employees that could be included in the  
9 covenant calculations?

10 A. No, she did not.

11 Q. Prior to March 2012 did Ms. Bebo tell  
12 the board that ALC was including anywhere between 50 to 100  
13 employees in the Ventas covenant calculations?

14 A. Definitely not.

15 Q. And prior to March 2012 did Ms. Bebo  
16 tell the board that without including employees in the  
17 covenant calculations that ALC would have failed certain of  
18 its covenants in the lease with Ventas?

19 A. No, she did not.

20 Q. And prior to March 2012 did Ms. Bebo  
21 ever tell the board that the practice of including  
22 employees in the Ventas covenant calculations had been  
23 approved by Eric Fonstad, ALC's general counsel?

24 A. She did not.

25 Q. On the topic of Mr. Fonstad, Ms. Bebo's



1 counsel has made representations to the SCC staff that Mr.  
2 Fonstad isn't -- or his memory is in some way impaired.  
3 You personally interacted with Mr. Fonstad, correct?

4 A. That is correct.

5 Q. Did you ever perceive any impairment or  
6 defect in Mr. Fonstad's memory or mental function?

7 A. Personally, no.

8 Q. Did Ms. Bebo prior to March 2012 ever  
9 tell the board that Grant Thornton had approved the  
10 inclusion of employees in ALC's covenant calculations?

11 A. No, she did not.

12 Q. Ms. Bebo testified in substance that at  
13 a later board meeting in 2009 Alan Bell requested that the  
14 board be aware of the -- be made aware of the difference  
15 between actual occupancy at the Ventas facilities as  
16 opposed to the occupancy numbers reported to Ventas. Did  
17 Mr. Bell make such a request at any time prior to March  
18 2012?

19 A. Not to my knowledge.

20 Q. Mr. Hennigar, I'm handing you a copy of  
21 a document that's previously been marked as SCC Exhibit 5.

22 A. Yes, sir.

23 Q. And do you recognize Exhibit 5 to be a  
24 copy of certain portions of the materials provided to ALC's  
25 board in advance of the March 2010 board meeting?

1                   A. Yes, I think that's accurate.

2                   Q. And I take it ALC's board received  
3 materials in advance of all the quarterly meetings,  
4 correct?

5                   A. That is correct.

6                   Q. And would you describe the contents of  
7 those materials as voluminous?

8                   A. Yes.

9                   Q. And those materials contained a variety  
10 of financial and other information regarding ALC and its  
11 properties, correct?

12                  A. Yes, they did.

13                  Q. I want to refer you to the table that's  
14 -- such as the one included on page 2,816 and 2,817 of  
15 Exhibit 5.

16                  A. I've seen those before, yes.

17                  Q. And this sort of -- the information  
18 contained in these tables, those were included in most of  
19 the board materials prior to the board meetings?

20                  A. I would say they'd be in all quarterly  
21 statements, yes.

22                  Q. And prior to the board meetings did you  
23 review these tables in significant detail?

24                  A. No, sir. If I looked at them at all, I  
25 looked at the top ten and the bottom ten.

1 Q. And based on your review of the  
2 materials prior to board meetings, were you ever -- did you  
3 ever ascertain that the actual occupancy at the CaraVita  
4 facilities was different than the occupancy numbers that  
5 were reported to Ventas?

6 A. No, I did not.

7 Q. And was -- the fact that there was a  
8 difference between the actual occupancy of the CaraVita  
9 facilities and the occupancy numbers being reported to  
10 Ventas, was that ever discussed at any board meeting prior  
11 to March 2012?

12 A. Never.

13 Q. Management never alerted the board to  
14 that fact, correct?

15 A. They did not.

16 Q. Mr. Hennigar, I'm handing you a document  
17 that's previously been marked as Commission Exhibit 84.

18 A. Yes.

19 Q. And I want to refer you to the table on  
20 the fifth page of Exhibit 84.

21 A. Right.

22 Q. Do you see that?

23 A. I see that.

24 Q. And I can represent to you that this is  
25 -- the table you're looking at is a copy of a spreadsheet

1 that ALC's finance department referred to as an occupancy  
2 reconciliation or occupancy recon.

3 A. I'm not familiar with it.

4 Q. And that's what I was going to ask.

5 Prior to March 2012 did you ever see an occupancy recon or  
6 anything similar to the table contained in Exhibit 84?

7 A. No, sir.

8 Q. And were you ever informed prior to  
9 March 2012 of ALC's process for accounting for the  
10 inclusion of employees in the covenant calculations?

11 A. I was not.

12 Q. Prior to March 2012 did you ever see the  
13 quarterly certifications and financial information that ALC  
14 sent to Ventas?

15 A. Never.

16 Q. I take it then that you did not  
17 participate in the preparation of those materials?

18 A. That is correct.

19 Q. Were you aware of the information --  
20 specific information that ALC was providing to Ventas in  
21 regard to compliance with the covenants in the Ventas  
22 lease?

23 A. I was not.

24 Q. I believe you said that you attended  
25 audit committee meetings?

1           A. As a rule, yes.

2           Q. And, to the best of your recollection,  
3 was the fact that employees were being used in the covenant  
4 calculations discussed at audit committee meetings that you  
5 attended prior to March 2012?

6           A. Not while I was in the room.

7           Q. Not to the best of your recollection?

8           A. Not to the best of my recollection, no.  
9 But I should tell you that I was out of the room frequently  
10 during audit committee meetings because most of the things  
11 were pretty routine and pretty boilerplate, that's when I  
12 was planning what was coming next with my travel schedule,  
13 et cetera, so it's possible something was discussed but I  
14 was not there.

15           Q. And the subject of employees being  
16 included in the covenant calculations, do you have a  
17 recollection of Grant Thornton discussing that with ALC's  
18 board of directors or the audit committee?

19           A. I do not, no.

20           Q. I want to just switch gears briefly.  
21 We've heard that there was a time that at some meeting of  
22 ALC's board of directors or one of the board committees  
23 that Derek Buntain made some sort of joke about occupancy  
24 at ALC's properties. Do you have any recollection of  
25 something like that?



1 you responded to those questions, were your responses based  
2 on your participation in board meetings?

3 A. I was chair of those meetings, yes, and  
4 I was there for the meetings.

5 Q. And your impression of what the board  
6 was told or what information the board had, that was based  
7 on your personal observations sitting at those board  
8 meetings?

9 A. That's correct, and my memory, but on  
10 this particular issue my memory is pretty good.

11 Q. So, I want to refer you back to Exhibit  
12 198. Thank you very much. And can I refer you to Exhibit  
13 -- page 4 of Exhibit 198.

14 A. Yes.

15 Q. And do you see how the third paragraph  
16 references that ALC is borrowing funds under a revolving  
17 credit agreement?

18 A. I do.

19 Q. And what was the institution that ALC  
20 had that credit agreement with in late 2008?

21 A. It would have been GE Credit.

22 Q. And during the late 2008 into 2009 time  
23 period was ALC drawing on that line of credit to pay  
24 certain operating expenses?

25 A. Yes.

1 Q. And did that mean that during that time  
2 period, late 2008 into 2009, that at times ALC was not  
3 generating sufficient cash flows to fund certain  
4 operational expenses?

5 A. I would categorize it more that if the  
6 accounts receivable didn't come in on a timely basis that  
7 they would have a cash flow problem.

8 Q. And there were such times?

9 A. There were such times. This was rather  
10 an unusual time in US financial history.

11 Q. It was a credit -- there was a credit  
12 crunch at the time?

13 A. There was a credit crunch.

14 Q. In approximately mid-2011 did ALC board  
15 undertake a process to try and sell the company?

16 A. Yes.

17 Q. And can you tell us just very generally  
18 how that came about.

19 A. In 2008 Scotia Investments, who was the  
20 shareholder of the shares of ALC, entered into an internal  
21 process which became known as codeword "Project Rubicon" to  
22 reorganize its affairs and distribute certain of its assets  
23 to the family -- three family groups that were involved,  
24 and that process ended in November of 2010, at which point  
25 the Hennigar family took their assets in a company called



1 Thornridge Holdings Inc. -- "Ltd.", rather, not "Inc." --  
2 and I became the chairman and the chief executive officer  
3 and we undertook a process of valuating what we thought the  
4 future prospects were for each of the assets that we  
5 acquired.

6           At the end of that program, which would have  
7 been in late spring of 2011, we had come to a conclusion  
8 and we recommended to the board, which accepted our  
9 recommendation, that we would dispose of ALC because it had  
10 the least upside potential of any of the major assets that  
11 we had acquired.

12           Q. And Scotia Investments, that's a  
13 Hennigar family company?

14           A. That was not a Hennigar family company,  
15 that was a company that had been established by my  
16 grandfather in 1945 and there are three branches -- three  
17 -- he had three children, one of which was Jean Jodrey who  
18 married my father and became Jean Hennigar, and there was  
19 Florence Bishop -- or Florence Jodrey, who married Lovatt  
20 Bishop, and then John Jodrey who was the son of R.A.  
21 Jodrey. So, that was the -- those three family groups went  
22 through a reorganization.

23           Q. So, it sounds like then that the  
24 decision to put ALC up for sale was based on the  
25 consideration -- the financial considerations of companies

1 specifics.

2 Q. And in regards to the sale process of  
3 ALC were you aware of any discussions about ALC not  
4 disclosing its occupancy figures to potential bidders?

5 A. No.

6 Q. Mr. Hennigar, I'm handing you a copy of  
7 an exhibit that's previously been marked as Exhibit 492,  
8 and I want to reference you to the third page of Exhibit  
9 492, which appears to be a letter to a staff member of the  
10 SCC dated August 5th, 2011.

11 A. Yes.

12 Q. And were you generally aware that in  
13 mid-2012 ALC received what's known as a comment letter from  
14 the SCC?

15 A. I think it was the year before that.

16 Q. 2011?

17 A. '11, yes.

18 Q. I'm sorry, I misspoke. And that in  
19 early August 2011 ALC's board was considering how to -- its  
20 response to the SCC's comment letter?

21 A. I'm not so sure it was a board response  
22 as much as it would have been a management response.

23 Q. Okay. Was ---

24 A. The board would certainly have been  
25 aware of it and probably -- and I'm just guessing -- Mel

1 Rhineland, myself and Alan Bell would have probably been  
2 in a more detailed possession of the outcome.

3 Q. And the letter in Exhibit 492, did -- do  
4 you -- was that letter reviewed at any board or committee  
5 meetings that you attended?

6 A. I couldn't tell you at this point. I do  
7 know that I signed off on it.

8 Q. So, you reviewed the letter?

9 A. Yes.

10 Q. Okay. And I'd like to direct you to the  
11 third page of the letter.

12 A. Yes.

13 Q. And do you see under the heading  
14 "Paragraph 1" it says:

15 "Based on current and reasonably  
16 foreseeable events and conditions, the  
17 company does not believe that it has a  
18 reasonably likely degree of risk of  
19 breaching the CaraVita covenants."

20 A. Yes.

21 Q. And were you aware that Mr. Buono had  
22 prepared an alternative draft of this letter which said  
23 that, instead, there was a likely risk of default under the  
24 Ventas covenants?

25 A. No, I'm not aware of it and I certainly

1 didn't see it.

2 Q. So, I'm handing you Exhibit 331. And I  
3 can reference that Exhibit 331 ---

4 A. It's the same letter.

5 Q. It's the alternative letter that I just  
6 mentioned to you.

7 A. Oh, it's the alternative? Okay.

8 Q. You can see on page 2,729, at the very  
9 top, in the first paragraph, it says:

10 "The company believes there is a  
11 reasonable likely level of risk of  
12 default under the operating covenants  
13 with regard to the CaraVita operating  
14 lease."

15 A. I see that.

16 Q. Did you ever see this version of the  
17 letter or anything containing that sentence I just read to  
18 you?

19 A. No, absolutely never.

20 Q. And in the context of responding to the  
21 SCC comment letter did Ms. Bebo ever discuss with you that  
22 employees were being included in the covenant calculations?

23 A. She did not.

24 Q. And, to your understanding, did she --  
25 in the context of responding to the SCC comment letter did

1 Ms. Bebo discuss with the board that ALC was including  
2 employees in the covenant calculations?

3 A. She did not, or at least not to me.

4 Q. At some point was it brought to your  
5 attention a proposal for ALC to purchase the CaraVita  
6 properties from Ventas?

7 A. Yes.

8 Q. And can you tell us how that proposal  
9 was brought to your attention.

10 A. I was -- I received a phone call on the  
11 morning of the 6th of March 2012 from Ms. Buono saying that  
12 she'd like to have me meet with -- or, sorry, Ms. Bebo  
13 rather -- meet with Mr. Buono before the human resource  
14 committee meeting that morning.

15 Q. And when you say "the human resource  
16 committee" ---

17 A. Corporate governance.

18 Q. --- the corporate governance ---

19 A. Human resource committee.

20 Q. --- and nominating committee?

21 A. Yeah.

22 Q. You're talking about the same thing?

23 A. The same committee, yes. Unfortunately,  
24 different companies that I'm involved in call it different  
25 things, but that's basically what its role was.

1 Q. So, prior to that meeting Ms. Bebo calls  
2 you and says, "Mr. Buono would like to speak to you"?

3 A. She'd like to have me speak with him,  
4 yes.

5 Q. Okay. And this is on March 4 -- or  
6 March 6, 2012?

7 A. That is correct.

8 Q. And on that day did Mr. Buono, in fact,  
9 come speak with you?

10 A. Yes, he did.

11 Q. What did he say in that conversation?

12 A. He indicated that he thought for \$90  
13 million dollars we could purchase the CaraVita companies --  
14 or the facilities, and that it would solve a whole lot of  
15 different problems if we did that.

16 Q. Was anyone present for this conversation  
17 other than you and Mr. Buono?

18 A. Just the two of us.

19 Q. And did I just hear you correctly that  
20 Mr. Buono, at that meeting, told you that buying the  
21 CaraVita properties can solve problems for ALC?

22 A. That is correct.

23 Q. And did Mr. Buono tell you what problems  
24 could be solved?

25 A. When I asked him what the problems were,

1 he then went into the -- yes, he did at that point.

2 Q. And what did he describe as the problems  
3 that could be solved?

4 A. What he described as the problem was  
5 that we were offside with the covenants with Ventas.

6 Q. That ALC was not meeting certain of its  
7 covenants?

8 A. Not meeting certain of its covenants and  
9 that if we had to go back and redo them it would be a very  
10 expensive proposition and, therefore, it was cheaper just  
11 to solve the problem by buying the company.

12 Q. And did -- at this meeting did Mr. Buono  
13 say anything to you about including employees in the  
14 covenant calculations?

15 A. Eventually, yes.

16 Q. Could you describe that for us, please.

17 A. When we got into the details he  
18 acknowledged that they had been reporting -- mis -- well,  
19 had been reporting numbers that included staff members, et  
20 cetera in the calculations that were being supplied to  
21 Ventas and that they were relying on an e-mail that Laurie  
22 Bebo had received from Ventas that she says -- or she had  
23 said would support that.

24 Q. So, in substance Mr. Buono tells you  
25 that ALC had been violating the covenants but that

1 previously ALC had said it was complying with the covenants  
2 because it was including employees in the calculations?

3 A. That is correct.

4 Q. And he told you that Ms. Bebo had some  
5 e-mail that supported that arrangement?

6 A. Yes.

7 Q. And what did you do after talking to Mr.  
8 Buono?

9 A. The corporate governance committee met  
10 shortly after that and I did nothing in between.

11 Q. And can you tell me about that meeting  
12 of the corporate governance committee.

13 A. At the meeting I informed the chairman  
14 that there was an issue that I felt that they should  
15 discuss before the dealt with the agenda item of the  
16 bonuses for the year for the management.

17 Q. And did that discussion take place?

18 A. That discussion then took place and I  
19 informed the board of what my discussion with Mr. Buono had  
20 been and we discussed it at some length and following that  
21 they asked Mr. Buono to come into the meeting.

22 MR. CHUNG: And, David, this was you  
23 informed the committee, not the whole board at this point?

24 THE WITNESS: No, no. The committee, yes,  
25 that were meeting as an HR committee or corporate



1 governance committee, whatever it's called.

2 --- BY MR. HANAUER:

3 Q. So, you informed the corporate  
4 governance committee that Mr. Buono had told you that ALC  
5 had been including employees in the covenant calculations  
6 and that without including those employees ALC would have  
7 violated certain of the covenants?

8 A. Right.

9 Q. And how ---

10 A. And also that we had this opportunity to  
11 buy the CaraVita companies -- or operations rather.

12 Q. And what were the corporate governance  
13 committee's discussions in regards to what you told them?

14 A. Well, they were concerned. That's when  
15 they asked Mr. Buono to attend.

16 Q. Okay. And did Mr. Buono ---

17 A. He came and repeated more or less the  
18 same thing that I had informed the board of and they asked  
19 him probably additional questions about it.

20 Q. And when Mr. Buono came to address the  
21 corporate governance committee did anything strike you  
22 about his appearance or manner?

23 A. He was quite frightened, scared.

24 Q. He looked scared to you?

25 A. He looked scared to me.

1 Q. And so did Mr. Buono then report to the  
2 corporate governance committee what he had previously  
3 reported to you personally?

4 A. Yes.

5 Q. What happened at that point?

6 A. The committee then asked for a copy of  
7 this e-mail that was supporting it, Mr. Buono said he  
8 didn't have a copy but Ms. Bebo did, so Mr. Buono was  
9 excused and Ms. Bebo was asked to come to the meeting.

10 Q. And what happened when Ms. Bebo came to  
11 the meeting?

12 A. She did not view this as a serious  
13 matter at all, she said this had been previously agreed  
14 with Ventas and it was much ado about nothing, in so many  
15 words, but the committee still insisted that the e-mail be  
16 provided, which was provided the following day.

17 Q. Ms. Bebo provided -- so on March 7 Ms.  
18 Bebo was able to provide the committee with a copy of the  
19 e-mail that's contained in Exhibit 199?

20 A. That is correct.

21 Q. And so March 7, 2012, that was the first  
22 time you had seen this e-mail?

23 A. That's the first time I'd ever seen it,  
24 yes.

25 Q. And how did the committee respond based

1 on your understanding to the e-mail that Ms. Bebo provided?

2 A. It became the topic of fairly intense  
3 conversation, the committee was very concerned -- in fact,  
4 it pre-empted the balance of the agenda -- and when the  
5 committee was concluded -- meeting was concluded, it was  
6 agreed that we would meet, all the members and myself, with  
7 each of the directors as they arrived and brief them on the  
8 event.

9 Q. Did -- was Mr. Bell, Mr. Alan Bell,  
10 shown a copy of the e-mail?

11 A. The following day.

12 Q. And did he have a response to the e-  
13 mail?

14 A. His view was that this really wasn't an  
15 authorization.

16 Q. That's something that Mr. Bell told you?

17 A. Yes.

18 Q. So, Mr. Bell told you in substance that  
19 the February 4, 2009 e-mail did not reflect an agreement by  
20 Ventas to allow the inclusion of employees in the covenant  
21 calculations?

22 A. That was his understanding and reading  
23 of it, yes.

24 Q. And when the corporate governance  
25 committee confronted Mr. Buono and Ms. Bebo about including

1 the employee in the covenant calculations did either of  
2 them, Ms. Bebo or Mr. Buono, tell the committee that the  
3 board had previously been made aware of the practice?

4 A. No, they did not say that.

5 MR. HANAUER: Can you mark this, please.

6 EXHIBIT NO. 693 (ENTERED) - BATES DOCUMENT ALCSEC00043415,  
7 CONTAINING SERIES OF E-MAILS DATED MARCH 16, 2012

8 --- BY MR. HANAUER:

9 Q. Mr. Hennigar, I'm handing you a document  
10 that's been marked as SCC Exhibit 693. And Exhibit 693 has  
11 -- it begins with the Bates No. ALCSEC00043415.

12 A. Yes.

13 Q. And I want to refer you to the bottom e-  
14 mail on the first page of Exhibit 693.

15 A. Yes.

16 Q. And does this appear to be an accurate  
17 copy of an e-mail from Mr. Bell to Mr. Rhineland and you  
18 dated March 16th, 2012?

19 A. Yes, it does.

20 Q. And this e-mail, the context of it is it  
21 took place after the March 6th compensation -- or corporate  
22 governance committee meeting, correct?

23 A. Yes, this is ten days later.

24 Q. And it's in the context of the company  
25 -- Ventas -- or, I'm sorry, it's in the context of ALC is

1 still trying to find buyers for the company?

2 A. I assume the committee was doing that,  
3 yes.

4 Q. Okay.

5 A. But I'm not familiar with the details,  
6 no.

7 Q. And I want to refer you to a sentence in  
8 Mr. Bell's e-mail to you that says:

9 "Second, an event of default would be  
10 material to the company, so not sure  
11 why a contingent liability are  
12 reserved."

13 Do you see that?

14 A. Yes.

15 Q. And did you understand that Mr. Bell was  
16 referencing an event of default under the Ventas lease?

17 A. That's my understanding of what it was,  
18 yes.

19 Q. And do you see how Mr. Bell writes that  
20 an event of default would be material to the company?

21 A. Yes.

22 Q. And did you -- was it your understanding  
23 that a default of the Ventas lease would have material  
24 effects on ALC's finances?

25 A. I believe, yes, it would have -- it had

1 an impact on the credit agreements.

2 Q. And it was your understanding that a  
3 default under the Ventas lease would have been material to  
4 ALC?

5 A. Yes.

6 EXHIBIT NO. 694 (ENTERED) - BATES DOCUMENT ALCBELL0007647  
7 AND 7648, CONTAINING E-MAIL CHAIN ENDING WITH E-MAIL TO MR.  
8 HENNIGAR FROM MR. BELL, DATED MARCH 20, 2012

9 --- BY MR. HANAUER:

10 Q. Mr. Hennigar, I'm handing you a copy of  
11 a document that's been marked as Exhibit 694 that has the  
12 Bates range ALCBELL0007647 and 7648.

13 A. Yes.

14 Q. And does Exhibit 694 appear to contain  
15 an accurate copy of an e-mail chain ending in an e-mail  
16 that Mr. Bell sent you on March 20th, 2012?

17 A. Yes.

18 Q. And do you see the top two e-mails where  
19 Ms. Bebo writes:

20 "Why do we want to re-look at the  
21 calculations and do them a different  
22 way?"

23 And Mr. Bell responds:

24 "More of the same. Unbelievable"?

25 A. I do.

1 Q. What was your understanding of the --  
2 what I just read to you? What was going on at the time?

3 A. Mr. Bell had been designated to try and  
4 ascertain what was the Ventas issues, or what were the  
5 Ventas issues, and how we should be dealing with them, and  
6 he's still trying to get information from Mr. Buono and Ms.  
7 Bebo to support making a decision, and he views it that  
8 he's getting the run-around.

9 Q. And was that your perception, that Ms.  
10 Bebo was giving Mr. Bell the run-around in regards to the  
11 quest to figure out what was going on?

12 A. Well, I wasn't on the front line, so I,  
13 you know, had to rely on his assessment of the situation.

14 Q. Okay. And it's your understanding that  
15 -- of his assessment that Ms. Bebo was giving him the run-  
16 around?

17 A. That would appear to be the case, yes.

18 EXHIBIT NO. 695 (ENTERED) - BATES DOCUMENT GTSEC031712  
19 THROUGH 715, CONTAINING E-MAIL TO MR. HENNIGAR AND OTHERS  
20 FROM MR. BELL, DATED APRIL 4, 2012

21 --- BY MR. HANAUER:

22 Q. Mr. Hennigar, I just handed you a  
23 document that's been marked as Exhibit 695, which has a  
24 Bates range GTSEC031712 through 715.

25 A. Yes.

1 Q. And does Exhibit 695 appear to be an  
2 accurate copy of an e-mail sent from Mr. Bell to you and  
3 other people dated April 4, 2012?

4 A. Yes.

5 Q. And did you receive this e-mail and the  
6 attachment on or about April 4, 2012?

7 A. Yes.

8 Q. And I want to reference the memorandum  
9 that begins on page 714.

10 A. Yes.

11 Q. And in paragraph A of the -- Section A  
12 of the memorandum, there are two bullet points at the  
13 bottom of that section. The first says:

14 "Highly unlikely that beb409bebo e-mail  
15 re employees is a legal basis for  
16 inclusion of employees to meet their  
17 residence occupancy/income covenants in  
18 the lease."

19 And the second is -- point says:

20 "J. Buono compliance certificate re  
21 patient revenue was clearly wrong."

22 A. I do.

23 Q. And how did -- based on your interaction  
24 with the board of directors how did -- what was the board's  
25 reaction to receiving this e-mail?



1           A. I don't have any specific recollection  
2 of any response, but I'm sure that I was certainly unhappy  
3 with it.

4           Q. And was it around this time that the  
5 board engaged Quarles & Brady to represent it in regards to  
6 a potential dispute with Ventas?

7           A. Again, I couldn't give you specific  
8 timelines of when people were engaged or weren't engaged.  
9 I know that they were the company lawyers and I know that  
10 they were involved in the Ventas transaction.

11          Q. Were you personally involved in ALC's  
12 discussions with Quarles & Brady in regards to the Ventas  
13 dispute?

14          A. No.

15          Q. And do you recall how Mr. Buono and Ms.  
16 Bebo reacted to the suggestions in Mr. Bell's April 3rd,  
17 2012 memo which I just read to you?

18          A. No, I do not.

19          MR. HANAUER: Can you mark this, please.

20 EXHIBIT NO. 696 (ENTERED) - BATES DOCUMENT ALCBELL0006737  
21 THROUGH 6742, INCLUDING ABELL000012 THROUGH ABELL000017 AND  
22 E-MAIL TO MR. HENNIGAR AND OTHERS FROM MR. BELL, DATED  
23 APRIL 26, 2012

24 --- BY MR. HANAUER:

25          Q. Mr. Hennigar, I've just handed you a

1 document that's been marked as Exhibit 696, which is -- has  
2 a Bates range ALCBELL0006737 through 6742.

3 A. Yes.

4 Q. And is -- just ---

5 A. I guess I should note that the last one  
6 doesn't have that reference number on it.

7 Q. Okay, that's fair. Is -- just for the  
8 record, Exhibit 696 also has a separate Bates range,  
9 ABELL12 through ABELL17.

10 A. Yes, it does.

11 Q. Okay. And is -- does Exhibit 696 appear  
12 to contain an accurate copy of an e-mail Mr. Bell sent you  
13 and others on April 26th, 2012?

14 A. It does.

15 Q. And do you see how Mr. Bell's e-mail  
16 references what he believes to be threats, or even using  
17 the term "blackmail", by Mr. Buono towards the board of  
18 directors?

19 A. I do.

20 Q. And what was your understanding of the  
21 board's response to the allegations in Mr. Bell's e-mail?

22 A. Well, I guess at that point in time we  
23 were very close to the next board meeting, so I think  
24 everybody just agreed to wait and discuss it when they were  
25 together at that point.

1 Q. And I take it in the months following  
2 this April 26 e-mail the board voted to terminate Ms.  
3 Bebo's employment, correct?

4 A. They did, unanimously.

5 Q. Is there -- but Mr. Buono, he remained  
6 working at the company, correct?

7 A. He did.

8 Q. Is there a reason why the board decided  
9 -- or did not also terminate Mr. Buono's employment at the  
10 same time it terminated Ms. Bebo's employment?

11 A. Yes.

12 Q. And what was that reason?

13 A. The reason would be that we had engaged  
14 Mr. Roadman, one of the directors, to come in and replace  
15 Ms. Buono(sic) and he needed somebody that had some  
16 familiarity with the details of the day-to-day operations  
17 and the financial side of it to be there to help him.

18 Q. So, the board wanted there to be some  
19 continuation of managerial experience once Ms. Bebo was  
20 terminated?

21 A. They wanted continuity, yes.

22 EXHIBIT NO. 697 (ENTERED) - BATES DOCUMENT ALC45535 TO  
23 5538, CONTAINING ALC BOARD OF DIRECTORS MEETING MINUTES,  
24 DATED MAY 15, 2012

25 --- BY MR. HANAUER:

1 Q. Mr. Hennigar, I'm handing you a document  
2 that's been marked as Exhibit 697, which has a Bates range  
3 of ALC45535 through 5538.

4 A. Yes.

5 Q. And is Exhibit 697 -- does that appear  
6 to be an accurate copy of the minutes of the -- ALC's board  
7 of directors meeting for May 5th, 2012?

8 A. Yes. I've signed these. Yes, it would  
9 be.

10 Q. May 15th, 2012.

11 A. Yeah.

12 Q. And at this point, May 15th, 2012,  
13 Ventas had sued ALC for violating certain covenants in its  
14 lease, correct?

15 A. Yes.

16 Q. And originally the lawsuit alleged  
17 violations of certain regulatory covenants in the lease.

18 A. Yes.

19 Q. And then by May 15th, 2012 the lawsuit  
20 had been amended to include allegations that ALC violated  
21 the occupancy covenants in the lease, correct?

22 A. Yes.

23 Q. And by May 15th, 2012 the board was  
24 discussing how to settle that lawsuit?

25 A. Yes.

1 Q. And as part of that lawsuit -- or that  
2 settlement, the board was contemplating purchasing the  
3 CaraVita facilities for \$100 million dollars?

4 A. Yes.

5 Q. And I can represent to you that ALC had  
6 obtained third party appraisals of the CaraVita properties  
7 and those appraisals resulted in a figure of approximately  
8 \$66 million dollars.

9 A. That is correct.

10 Q. And I want to refer you to page 2 of  
11 Exhibit 697, and the second-to-last paragraph said:

12 "The board recognized, on analyzing the  
13 transaction, a \$100 million dollar  
14 purchase price for the properties was  
15 at the upper end of the market value  
16 range and viewed in isolation may give  
17 rise to criticism."

18 A. I see that, yes.

19 Q. And is this -- these minutes consistent  
20 with a board discussion on those -- on that subject at the  
21 May 15th, 2012 meeting?

22 A. It is.

23 Q. And do you know why ALC was willing to  
24 pay approximately \$34 million dollars above appraisal value  
25 for the CaraVita properties?

1           A. There would be a number of factors.  
2 Settling the Ventas lawsuit was important to the company,  
3 important to it for its credit arrangements, important to  
4 it for what was, I believe, going on in the sale process at  
5 that point. And valuations are one of those things that  
6 are in the eye of the beholder, some people think it's  
7 worth more, some people think it's worth less, and nursing  
8 homes have a very wide range of valuations depending on  
9 where they're located and what kind of occupancy they have,  
10 et cetera.

11           Q. And was one of the reasons that ALC was  
12 willing to pay more than the appraised value -- was it  
13 because ALC thought that Ventas could prevail in its claims  
14 that it violated the occupancy covenants with Ventas?

15           A. I don't know that I could tell you that.  
16 That would be a legal question.

17           Q. I want to -- in the course of what we've  
18 discussed today, the consequences of what happened in  
19 regards to ALC's lease with Ventas and the resulting  
20 dispute, did that have a financial effect on companies  
21 controlled by your extended family?

22           A. Would you repeat that question again,  
23 please.

24           Q. Yeah. It was a bad question. Your  
25 family -- your extended family, through companies that they

1 control, owned a significant amount of ALC stock. Is that  
2 accurate?

3 A. That's accurate, yes.

4 Q. And did you have an occasion to try and  
5 determine the financial impact on your family's  
6 stockholdings that flowed from the events that we've been  
7 discussing today?

8 A. Yes.

9 Q. And how did you go about making that  
10 determination of the financial impact?

11 A. We had the ALC shares on our books at  
12 the valuation that was arrived at for the Rubicon  
13 transaction, and at the end of the day it cost us, I guess,  
14 around \$13 million dollars from the price that it was  
15 booked at on our accounts.

16 Q. And that loss in value was a -- flowed  
17 from the events we've discussed today in regards to ALC's  
18 relation with Ventas?

19 A. Well, I don't know that you could put it  
20 all to Ventas. There was a whole bunch of different things  
21 that occurred after that.

22 Q. Okay. And ---

23 A. I mean, that's between the final sale  
24 price of the company and the value that we had it on our  
25 books for.

1 Q. And in making this determination that  
2 the family's losses were approximately \$13 million dollars,  
3 were -- did you rely on accountants to make that  
4 determination?

5 A. Yes, we did.

6 MR. TANDY: Did the loss, at least in part  
7 flow from the events that we've talked about today?

8 THE WITNESS: I would say yes, definitely.

9 --- BY MR. HANAUER:

10 Q. During the time that Ms. Bebo was the  
11 CEO of ALC she received discretionary bonuses?

12 A. Yes.

13 Q. And it was -- who determined whether ALC  
14 would award Ms. Bebo a discretionary bonus?

15 A. That would have been the compensation  
16 committee.

17 Q. And were the compensation committee's  
18 determinations of a bonus -- did that have to be ratified  
19 by the board of directors?

20 A. Yes, it did.

21 Q. And had you been aware -- this is a  
22 hypothetical question -- had you been aware that Ms. Bebo  
23 had engaged in fraud, either defrauding Ventas or  
24 defrauding ALC's shareholders or ALC's board of directors,  
25 would you have voted to authorize a discretionary bonus for



1 her?

2 A. Not a chance.

3 Q. And based on your understanding of ALC's  
4 board of directors, would the board have authorized a bonus  
5 for Ms. Bebo if it was aware she had engaged in fraud?

6 A. In my opinion, the answer would be no.

7 Q. Would Mr. -- I'm going to ask you the  
8 same questions in regard to Mr. Buono. If you were aware  
9 that Mr. Buono had engaged in fraud, would you have voted  
10 for him to receive a bonus?

11 A. Never.

12 Q. And based on your understanding of ALC's  
13 board, do you believe that the board would have authorized  
14 a bonus for Mr. Buono had it been aware that he engaged in  
15 fraud?

16 A. I don't believe they would, no.

17 Q. And it's my understanding -- one of the  
18 other corporations indirectly owned by members of your  
19 extended families is a company called High Line Foods, is  
20 that correct?

21 A. High Liner.

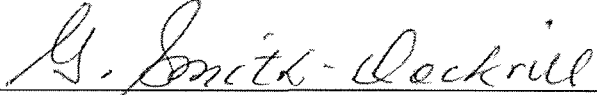
22 Q. Oh, I'm sorry, High Liner Foods.

23 A. High Liner Foods, Inc., yes. We own 40  
24 percent roughly.

25 Q. Okay. And it's my understanding that

CERTIFICATE OF COURT TRANSCRIBER

I, Gwenyth Smith-Dockrill, Court Transcriber, hereby certify that I have transcribed the foregoing and that it is a true and accurate transcript of the evidence given IN THE MATTER OF AN INVESTIGATION ORDER ISSUED PURUSANT TO SECTION 27(1) OF THE ACT and IN THE MATTER OF A SUMMONS TO DAVID J. HENNIGAR, taken by way of electronic recording, on Thursday, July 24, 2014.

  
\_\_\_\_\_

Gwenyth Smith-Dockrill

Court Transcriber, Reg. No. 2006-45

Halifax, Nova Scotia

Thursday, September 11, 2014

# Exhibit 2

IN THE MATTER OF THE SECURITIES ACT  
R.S.O. 1990, c. S.5, as amended

- and -

IN THE MATTER OF ASSISTED LIVING CONCEPTS INC.

SECTION 13

\*\*\*\*\*

CONFIDENTIAL

\*\*\*\*\*

PURPOSE: COMPELLED INTERVIEW OF MALEN S.Y. NG

HELD ON: Thursday, July 31, 2014, 9:04 a.m.

HELD AT: Ontario Securities Commission  
20 Queen Street West, 8th Floor  
Toronto, Ontario

APPEARANCES:

Lisa Stein For Staff of OSC

Benjamin J. Hanauer, For Staff of SEC  
Scott B. Tandy

John C. Kocoras, For Malen S.Y. Ng  
Daniel R. Campbell,  
Edward J. Waitzer,  
Sinziana Hennig

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LIST OF EXHIBITS

NO.	DESCRIPTION	PAGE
707	Section 13 order issued under the Ontario Securities Act July 8, 2014.	6
708	Section 11 order issued under the Ontario Securities Act May 29, 2014.	7
709	Background questionnaire re Malen Ng.	11
710	E-mail from John Buono to Malen Ng November 5, 2009 (ALC 92021).	70

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1 Toronto, Ontario

2 --- Upon commencing on Thursday, July 31, 2014  
3 at 9:04 a.m.

4 SWORN: MALEN SING YING NG

5 MS. STEIN: My name is Lisa  
6 Stein. I'm an investigator with the Ontario  
7 Securities Commission. With me are Benjamin  
8 Hanauer and Scott Tandy, who are Staff with the  
9 United States Securities and Exchange Commission.  
10 The time is approximately 9:04 on Thursday, July  
11 31st, 2014 and we are conducting an interview of  
12 Malen Ng.

13 If you would, Ms. Ng, please  
14 state your full name and address

15 A. My full name is Malen  
16 Sing Ying Ng, and my address, 17 Lytton Boulevard  
17 in Richmond Hill, L4B 3H2.

18 MS. STEIN: Thank you.

19 I would like to confirm that  
20 Ms. Ng is appearing here with counsel. Could  
21 counsel all please identify themselves?

22 MR. KOCORAS: Good morning.  
23 John Kocoras from the law firm of McDermott, Will  
24 & Emery on behalf of Ms. Ng.

25 MR. CAMPBELL: And Dan

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1 Campbell from McDermott, Will & Emery on behalf of  
 2 Ms. Ng as well.

3 MS. HENNIG: Sinziana Hennig  
 4 from Stikeman Elliott.

5 MR. WAITZER: And Ed Waitzer  
 6 also from Stikeman Elliott.

7 MS. STEIN: And does counsel  
 8 have any comments for the record at this time?

9 MR. WAITZER: I think we  
 10 should just put on the record that our client --  
 11 that this is a compelled examination pursuant to  
 12 an order under section 11 of the Ontario  
 13 Securities Act and our client relies on the  
 14 protections afforded under that Act, including  
 15 sections 16 to 18, and also relies on the  
 16 protections afforded under the Ontario Evidence  
 17 Act and the Canada Evidence Act.

18 MR. KOCORAS: And if I may  
 19 add, that by participating in this compelled  
 20 examination, Ms. Ng does not and does not intend  
 21 to waive any rights or protections she has under  
 22 Canadian or U.S. law, including any rights or  
 23 protections she has regarding the use of today's  
 24 testimony.

25 MR. HANAUER: And I can just



1 add for the record, on behalf of the U.S.  
2 Securities and Exchange Commission, the SEC  
3 intends to abide by its agreements and memoranda  
4 of understanding with the Ontario Securities  
5 Commission as they relate to this proceeding.

6 BY MS. STEIN:

7 1. Q. I would like to confirm  
8 that you are attending here pursuant to a summons  
9 issued by me under section 13 of the Ontario  
10 Securities Act issued on the 8th day of July, 2014  
11 by me. Is that correct?

12 A. Yes.

13 2. Q. This is a copy of the  
14 summons which is marked as Exhibit 707. You can  
15 confirm that's what you received?

16 A. Yes.

17 MS. STEIN: Thank you.

18 EXHIBIT NO. 707: Section  
19 13 order issued under the  
20 Ontario Securities Act  
21 July 8, 2014.

22 BY MS. STEIN:

23 3. Q. I would also like to  
24 advise you that an investigation order issued by  
25 the Ontario Securities Commission under section 11

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1 of the Ontario Securities Act on the 29th day of  
 2 May 2014 appoints Benjamin Hanauer, Scott Tandy of  
 3 the United States Securities and Exchange  
 4 Commission and myself of the Ontario Securities  
 5 Commission to conduct an investigation pursuant to  
 6 section 11 of the Act.

7 This is a copy of the order  
 8 issued under subsections 11(1)(a) and (b) of the  
 9 Act. It's marked as Exhibit 708. This is not a  
 10 public document but it's here for you to refer to  
 11 at any time during the interview.

12 EXHIBIT NO. 708: Section  
 13 11 order issued under the  
 14 Ontario Securities Act  
 15 May 29, 2014.

16 MR. KOCORAS: And we  
 17 acknowledge you've provided a copy of the order.

18 MS. STEIN: Thank you. And  
 19 that stays in this room. So it's not for you to  
 20 be able to take home with you, but it's here for  
 21 you to refer to during the course of the  
 22 interview.

23 MR. HANAUER: And, counsel, if  
 24 you wouldn't mind keeping the exhibits shown to  
 25 the witness just separate so we can retrieve them

1 after the testimony.

2 EXAMINATION BY MR. HANAUER AND MR. TANDY:

3 BY MR. HANAUER:

4 4. Q. Good morning, Ms. Ng.

5 I'm Ben Hanauer. To my right is Scott Tandy. We  
6 are officers of the United States Securities and  
7 Exchange Commission for the purpose of this  
8 proceeding.

9 The SEC is proceeding under an  
10 investigation titled In the Matter of Assisted  
11 Living Concepts Inc., investigation number C-7948,  
12 to determine whether there have been violations of  
13 certain provisions of the United States federal  
14 securities laws. However, the facts developed in  
15 this investigation might constitute violations of  
16 other federal or state, civil or criminal laws.

17 Prior to the opening of the  
18 record, you were provided with a copy of the  
19 formal order of investigation in this matter. It  
20 will be available for your examination during the  
21 course of this proceeding.

22 Ms. Ng, have you had an  
23 opportunity to review the formal order?

24 A. Yes, I have.

25 5. Q. Prior to the opening of

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1 the record, you were provided with a copy of the  
2 SEC's Supplemental Information Form, form number  
3 1662, and a copy of that form has previously been  
4 marked as SEC Exhibit 1.

5 Ms. Ng, have you had the  
6 opportunity to read SEC Form 1662?

7 A. Yes, I have.

8 6. Q. And do you have any  
9 questions concerning that document?

10 A. No.

11 7. Q. I just want to go over  
12 some preliminary instructions.

13 Everything we say today is  
14 being recorded by the court reporter and will be  
15 transcribed into a written transcript. For that  
16 reason, we want both myself and you to be as clear  
17 as possible so the reporter can get down  
18 everything that we say, and when you provide an  
19 answer, can you please answer to the best of your  
20 knowledge?

21 A. Yes.

22 8. Q. If you don't understand a  
23 question I've asked, please let me know. Okay?

24 A. Okay.

25 9. Q. And if you can't hear my

1 question, just ask me to repeat it. Okay?

2 A. Okay. Thank you.

3 10. Q. And if you do answer a  
4 question, I'll assume that you understood the  
5 question I asked. Is that all right?

6 A. Yes.

7 11. Q. And because there's a  
8 court reporter, it would just be helpful if before  
9 you answer one of my questions, you wait for me to  
10 finish asking it, and when you are giving an  
11 answer, I will do my best to wait for you to  
12 finish providing your answer before I ask another  
13 question. Is that all right?

14 A. Yes.

15 12. Q. And if you need to take a  
16 break for any reason, just let me know and we'll  
17 ask the court reporter to go off the record.  
18 Okay?

19 A. Okay.

20 13. Q. And, Ms. Ng, is there  
21 anything that will impair your ability to give  
22 testimony today?

23 A. No.

24 14. Q. Are you taking any  
25 medications or do you have any medical condition

1 that would affect memory?

2 A. No.

3 15. Q. Ms. Ng, I just handed you  
4 a document that's been marked as Commission  
5 Exhibit 709.

6 A. Yes.

7 16. Q. And you'll see that  
8 Exhibit 709 is a background questionnaire.

9 EXHIBIT NO. 709:  
10 Background questionnaire  
11 re Malen Ng.

12 BY MR. HANAUER:

13 17. Q. Did you provide the  
14 responses to the questions in Exhibit 709?

15 A. Yes, I have.

16 18. Q. And will you look to the  
17 back page of Exhibit 709?

18 A. Yes.

19 19. Q. Is that your signature?

20 A. Yes, it is.

21 20. Q. And are the answers that  
22 you provided in Exhibit 709 truthful and accurate?

23 A. Yes.

24 21. Q. So I'd like you to just  
25 very briefly go through your employment history,

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1 the jobs you've held, starting with when you  
 2 graduated from university.

3 A. Yeah. I started with  
 4 Ontario Hydro in 1975.

5 22. Q. And what type of business  
 6 is Ontario Hydro?

7 A. It is the crown  
 8 corporation in Ontario that generates, transmits  
 9 and distributes a lot of the electricity in the  
 10 Province of Ontario.

11 23. Q. And can you briefly take  
 12 me through your career at the hydro company?

13 A. Yes. I joined Ontario  
 14 Hydro in 1975 in their training program. They  
 15 have their own individual training programs for  
 16 people coming straight, you know, from school. I  
 17 worked there for a number of years in the finance  
 18 area, having positions of increasing  
 19 responsibility, and I think towards the latter  
 20 part of my employment history with Ontario Hydro,  
 21 I was the VP of corporate finance from 1995 to  
 22 1997 and become the chief financial officer of  
 23 Ontario Hydro Services from 1997 to 1999, whereby  
 24 Ontario Hydro was split into what they call the  
 25 Ontario Power Generation and Hydro One.

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1 Ontario Power Generation is  
 2 the generation arm, and Hydro One was the wires or  
 3 the transmission and distribution arm, and I  
 4 became the executive VP and chief financial  
 5 officer of Hydro One from 1999 to 2001, and then  
 6 by the time in 2002, I was moved to a line  
 7 function as the president and CEO of Hydro One  
 8 Networks.

9 So that was my employment  
 10 history with the Ontario Hydro, slash, Hydro One  
 11 family.

12 24. Q. And just so the record is  
 13 clear, Exhibit 709 reflects that you were the  
 14 president and CEO of Hydro One Networks from 2000  
 15 through October 2002?

16 A. Right.

17 25. Q. Is that accurate?

18 A. Yes, it is.

19 26. Q. And where did you go to  
 20 work after Hydro One Inc.?

21 A. I went to Worker Safety  
 22 and Insurance Board, and I was hired as the CFO  
 23 there.

24 27. Q. And what is the Worker  
 25 Safety and Insurance Board?

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1                   A.    It is the workers'  
2    compensation organization.  It's a statutory  
3    organization responsible for all the worker  
4    compensation and insurance in the Province of  
5    Ontario.

6    28.               Q.    And you were the chief  
7    financial officer of the Worker Safety and  
8    Insurance Board from approximately September 2003  
9    through November 2009?

10                   A.    That's correct.

11    29.               Q.    During the period 2008  
12    through 2012, did you sit on any board of  
13    directors?

14                   A.    Yes.

15    30.               Q.    For which entities?

16                   A.    Do you mind repeating the  
17    question in terms of the time period?

18    31.               Q.    Yes, absolutely.  During  
19    the period 2008 through 2012, did you serve on any  
20    boards of directors?

21                   A.    Yes.  For that period, I  
22    was serving on the board of Assisted Living  
23    Concepts and I was also serving on the board of  
24    Empire Company Limited.

25                   I should also amend by saying

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1 that I was also serving on the board of Sobeys  
2 Inc., which is really the major operating  
3 subsidiary of Empire Company Limited, and it was  
4 taken private by Empire in 2007. Because it was  
5 still having publicly-issued debt, I've listed it  
6 on the exhibit but really from a matter of board  
7 matters, the participation, it's kind of two  
8 boards as one.

9 32. Q. And it's my understanding  
10 that Sobeys is one of the larger grocery store  
11 chains in Canada?

12 A. It's the second largest  
13 and it's a national grocery chain in Canada.

14 33. Q. And at either Sobeys or  
15 Empire Company Limited, did you have any positions  
16 on the board of directors, any specific positions?

17 A. Yes. During that period,  
18 I was the chair of the audit committee.

19 34. Q. Of both entities?

20 A. Yes.

21 35. Q. Sobeys --

22 A. Because it's two  
23 operating --

24 36. Q. I'm sorry, let me just  
25 finish the question. I apologize.

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1                   You were the chair of the  
2   audit committee of the board of directors of both  
3   Sobeys and Empire Company?

4                   A.   That's correct.

5   37.              Q.   And were you on the board  
6   -- during the 2008 through 2012 period, were you  
7   on the board of directors of any other entities?

8                   A.   My recollection in terms  
9   of the exact dates are not precise. I was on the  
10   board of a small employee-owned firm which was  
11   sold. I can't remember exactly when it was sold.  
12   It's a few years back. So it may be 2008. It may  
13   be 2009, but it's in around that period.

14   38.              Q.   And were you on the board  
15   of directors of any other entities?

16                   A.   I started to come on to  
17   the board of Sunnybrook Health Sciences Centre,  
18   but that would be after 2008.

19   39.              Q.   And do you know  
20   approximately the time period you served as a  
21   director of Sunnybrook?

22                   A.   I am still a director  
23   there. I just don't remember precisely when I  
24   joined. It's a few years ago.

25                   MR. KOCORAS: And we may need

1 to clarify. You joined Sunnybrook after 2008, you  
2 stated?

3 THE WITNESS: It's in around  
4 that time. I cannot remember the exact date.

5 BY MR. HANAUER:

6 40. Q. And what sort of entity  
7 is Sunnybrook?

8 A. It's a hospital. It's  
9 one of the largest hospital in the Province of  
10 Ontario.

11 41. Q. And I want to shift your  
12 focus to Assisted Living Concepts.

13 BY MR. TANDY:

14 42. Q. Is it true that you  
15 retired from full-time employment in November  
16 2009?

17 A. Yes.

18 BY MR. HANAUER:

19 43. Q. I want to shift the focus  
20 to Assisted Living Concepts Inc., which for the  
21 remainder of the testimony I'm going to refer to  
22 as ALC.

23 A. Right.

24 44. Q. Do you understand?

25 A. Yes, I do.

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1 45. Q. How was it that you  
 2 became a member of ALC's board of directors?

3 A. I was recommended to be  
 4 on the board of ALC member because I was before  
 5 that on the board of Extendicare, and when  
 6 Extendicare was separated into the REIT and ALC, I  
 7 think it's in November 2006 I was, as part of the  
 8 original board, I was split out to the ALC board.

9 46. Q. And once you became a  
 10 director of ALC, you were the chair of its audit  
 11 committee?

12 A. Yes.

13 47. Q. Did you have any other  
 14 positions at ALC?

15 A. No. If I may amend my  
 16 answer, when it was first spun off, I became the  
 17 chair of the audit committee, and I do not have  
 18 any of -- I did not have any position then, but  
 19 subsequently, I think it's back in 2011, and my  
 20 memory here may not be exactly right in terms of  
 21 year, the special committee was constituted and I  
 22 became a member of the special committee of ALC.

23 48. Q. And that special  
 24 committee you referenced, its responsibilities  
 25 were attendant to trying to find potential

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1 purchasers for the company?

2 A. It's to explore strategic  
3 alternatives for the company. And I should also  
4 add to that is then in the latter part of 2012, I  
5 was also added to the CNG committee, which is a  
6 compensation and nominating governance committee.

7 BY MR. TANDY:

8 49. Q. How long were you the  
9 chair of the audit committee?

10 A. I was the chair of the  
11 audit committee of ALC from November 2006, when it  
12 was first formed, to when it kind of was sold to  
13 the purchaser.

14 50. Q. Do you know generally  
15 when that was?

16 A. I think it's 2013.

17 BY MR. HANAUER:

18 51. Q. And that's when ALC was  
19 sold?

20 A. That's right.

21 52. Q. Did the audit committee  
22 typically hold its meetings in the presence of the  
23 full board of directors?

24 A. Yes. Typically, yes.

25 53. Q. And can you briefly

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1 describe your responsibilities as chairman of  
 2 ALC's audit committee?

3 A. In general, I think I  
 4 play the role with respect to maybe coordinating  
 5 and chairing the meetings and coordinating  
 6 anything that needs to be coordinated with the  
 7 external auditor to make sure that the audit  
 8 committee is able to fully execute its  
 9 responsibilities.

10 54. Q. And I take it part of  
 11 your role as a board member, both a director and  
 12 as a chair of the audit committee, would be to  
 13 prepare for the quarterly board and audit  
 14 committee meetings?

15 A. Yes.

16 55. Q. And as part of those  
 17 preparations for the audit committee meetings, who  
 18 did you typically speak with in advance of the  
 19 quarterly audit committee meetings?

20 A. I typically would have  
 21 three sets of preaudit conference calls, one with  
 22 the external auditor separately and one with the  
 23 CFO separately and one with the internal auditor.

24 56. Q. And these calls took  
 25 place in advance of each quarterly audit committee

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1 meeting?

2 A. That's correct.

3 57. Q. And these calls that you  
 4 just referenced, did anyone else from the board of  
 5 directors or audit committee participate in those  
 6 phone calls other than you?

7 A. I have been typically the  
 8 person who has been attending it until April or  
 9 May, late April or early May. It's actually  
 10 April. I'm sorry, let me just correct myself.  
 11 It's April 2012. Starting from that time it has  
 12 been attended by all audit committee members when  
 13 they are available.

14 So they're always all invited  
 15 and typically they do attend.

16 58. Q. But prior to April 2012,  
 17 the preaudit committee discussions with the  
 18 outside auditor, the CFO and the internal auditor,  
 19 you were the sole representative of the board of  
 20 directors and audit committee on those calls;  
 21 correct?

22 A. That's correct.

23 59. Q. And it's my understanding  
 24 that Ms. Laurie Bebo was the CEO and a member of  
 25 ALC's board of directors?

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1 A. That's correct.

2 60. Q. Do you know how Ms. Bebo  
3 became CEO of ALC?

4 A. Could you please repeat  
5 your question?

6 61. Q. To the best of your  
7 understanding, how was it that Ms. Bebo became the  
8 CEO of ALC?

9 A. To the best of my  
10 understanding, Ms. Bebo was actually responsible  
11 for the ALC segment in Extendicare before the  
12 company was split off.

13 So to my best understanding,  
14 she then, when the company was split off, became  
15 the CEO of ALC still leading that component.

16 62. Q. Do you know who made the  
17 decision for Ms. Bebo to transition from her role  
18 at Extendicare to the role of CEO at ALC?

19 A. I do not know.

20 63. Q. I want to switch gears  
21 now and focus on a lease that ALC entered with a  
22 company called Ventas for certain facilities in  
23 the southeast United States. Do you know what I'm  
24 talking about?

25 A. Yes.

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1 --- Mr. Waitzer exits interview at 9:28 a.m.

2 BY MR. HANAUER:

3 64. Q. And is it your  
4 understanding that this lease with Ventas covered  
5 eight assisted living facilities that were  
6 commonly known as the CaraVita facilities?

7 A. Yes.

8 65. Q. And when did you become  
9 aware that ALC was considering leasing the  
10 CaraVita facilities from Ventas?

11 A. I believe it's in 2007.

12 66. Q. And whose idea was it for  
13 ALC to lease the CaraVita facilities from Ventas?

14 A. The proposal was brought  
15 forward by Laurie Bebo, who was the president and  
16 CEO.

17 67. Q. And can you describe the  
18 level of support that Ms. Bebo advocated for the  
19 CaraVita -- for entering the Ventas lease?

20 A. Ms. Bebo was recommending  
21 that we go ahead with the lease.

22 68. Q. Was she a strong  
23 proponent of entering the lease?

24 A. I would say so.

25 69. Q. And do you recall the

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1 reasons Ms. Bebo gave to the board of directors in  
2 support of entering the CaraVita lease?

3 A. I do not remember the  
4 specific comments and the remarks she made, but  
5 she was a proponent of going ahead with the lease.

6 70. Q. Did you review the lease  
7 at the time ALC's board was considering whether to  
8 enter the lease?

9 A. We as a board reviewed  
10 what management put forward as the summary or key  
11 highlights of the lease.

12 71. Q. And were you aware that  
13 the lease contained certain covenants related to  
14 occupancy and revenue coverage ratios at the  
15 CaraVita facilities?

16 A. Yes.

17 72. Q. Management made the board  
18 aware of those provisions of the lease?

19 A. Yes.

20 73. Q. At the time ALC was  
21 considering entering the lease?

22 A. Yes.

23 74. Q. And did management also  
24 make the board aware of the provisions in the  
25 lease which set forth the consequences that would

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1 occur if the occupancy and coverage ratio  
 2 covenants were not satisfied?

3 A. Yes.

4 75. Q. After you were briefed on  
 5 the lease by management, what were your thoughts  
 6 on whether ALC should enter the Ventas lease?

7 A. I had concerns, firstly,  
 8 with respect to the covenant conditions and the  
 9 stringent nature of it. I was also concerned  
 10 about the strategic fit or where it fit into the  
 11 strategic direction of the company.

12 76. Q. What do you mean by that?

13 A. We were moving towards  
 14 private pay, and there's a lot of attention,  
 15 management attention, that are needed to focus on  
 16 that, so would adding new properties right now  
 17 necessarily compliment that or distracts from  
 18 that.

19 77. Q. And did you have any  
 20 other concerns about the lease?

21 A. Those are what I recall.

22 78. Q. And the concerns that you  
 23 just described, did you raise those concerns with  
 24 the board of directors?

25 A. Yes.

1 79. Q. And how did Ms. Bebo  
 2 respond to the concerns that you voiced, in  
 3 particular, to the concerns you voiced regarding  
 4 the covenants?

5 A. She provided her  
 6 rationale as to why it's a good fit and have  
 7 provided comfort that management is able to meet  
 8 the covenants.

9 80. Q. Did she say anything  
 10 about the level of risk attendant to the  
 11 covenants?

12 A. I do not recall.

13 81. Q. And ultimately did you  
 14 vote for ALC to enter the Ventas lease?

15 A. Yes.

16 82. Q. And why is it -- can you  
 17 explain why you chose to vote for the Ventas  
 18 lease?

19 A. Because management has  
 20 provided, you know, the context as to how they --  
 21 and the comfort that they have in terms of fitting  
 22 this within the strategic direction and also the  
 23 ability to meet the covenants.

24 83. Q. And I take it you trusted  
 25 management's representations about both the

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1 strategic fit and the company's ability to meet  
2 the confidence?

3 A. I have no reason at the  
4 time to doubt, you know, her explanations.

5 84. Q. And I'll represent to you  
6 that the board voted to authorize -- enter the  
7 lease and the lease became effective approximately  
8 January 1st, 2008. Is that consistent with your  
9 recollection?

10 A. Yes.

11 85. Q. And once ALC entered the  
12 lease with Ventas, what did the board do to  
13 monitor compliance with the occupancy and coverage  
14 ratio covenants in the Ventas lease?

15 A. We asked management to  
16 report back regularly on the situation, and a page  
17 was included in the management presentation for  
18 each quarterly meeting that will show us how it's  
19 doing.

20 86. Q. And this request that  
21 management made or -- I'm sorry, strike that.

22 This request that the board  
23 made to management to report on compliance with  
24 the occupancy and coverage covenants, did the  
25 board make this request fairly early into the term

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1 of the Ventas lease?

2 A. Yes.

3 87. Q. And after the board made  
4 this request to management, did the board -- did  
5 management report on ALC's compliance with the  
6 covenants in the Ventas lease at each subsequent  
7 board meeting?

8 A. It has reported back  
9 every quarter via that page in the management  
10 presentation.

11 88. Q. So beginning sometime in  
12 2008 management begins reporting to the board on a  
13 quarterly basis whether ALC is complying with the  
14 -- certain covenants in the Ventas lease?

15 A. That's correct.

16 89. Q. And prior to March 2012,  
17 at any board or audit committee meeting did  
18 management report that ALC was not in compliance  
19 with any of the covenants in the Ventas lease?

20 A. No.

21 90. Q. Ms. Ng, I'm handing you a  
22 document that's previously been marked as Exhibit  
23 130 and it's a memorandum from John Buono to ALC's  
24 board of directors dated October 27th, 2008?

25 A. Yes.

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1 91. Q. Did you receive this  
2 document as a member of ALC's board of directors?

3 A. I must have received it  
4 given that it's addressed to the board of  
5 directors, although I don't have specific  
6 recollection of the specifics.

7 92. Q. Okay. And given that you  
8 don't have specific recollection, I may alert you  
9 to certain portions of this memorandum and just  
10 ask you about your recollections relating to those  
11 portions of the memorandum.

12 And I want to refer you to the  
13 second paragraph on the first page of Exhibit 130,  
14 the last sentence of that paragraph which reads:

15 In general, breach of any  
16 of the occupancy or  
17 financial coverage  
18 covenants would entitle  
19 Ventas to terminate the  
20 lease as to all or some  
21 of the properties and  
22 require payment of the  
23 present value of unpaid  
24 future rental amounts.

25 Do you see that?

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1 A. Yes.

2 93. Q. And were you aware of  
3 this in late 2008?

4 A. Yes.

5 94. Q. And was it your  
6 understanding that the board of directors was also  
7 alerted to that fact regarding what would happen  
8 if the covenants were breached in the Ventas  
9 lease?

10 A. Yes.

11 95. Q. Based on your  
12 interactions with Ms. Bebo, did it appear to you  
13 that she understood what would happen if ALC  
14 breached the occupancy or coverage covenants in  
15 the Ventas lease?

16 A. Yes.

17 96. Q. And why do you say that  
18 Ms. Bebo understood that?

19 A. Given that she was the  
20 person who originally brought forward the proposal  
21 on the lease agreement, which she must have seen  
22 these terms, seeing that she is on the board of  
23 directors, she must have also received this.

24 So while I don't know for sure  
25 that she understood, it's not unreasonable to

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1 believe that she understood it.

2 97. Q. So Ms. Bebo, as a member  
3 of the board of directors, would have received the  
4 memorandum that's in Exhibit 130?

5 A. Yes.

6 98. Q. And I want to refer you  
7 to the first sentence in the second paragraph of  
8 Exhibit 130 which says:

9 Occupancy has declined in  
10 the portfolio since its  
11 purchase January 1, 2008.

12 A. Right.

13 99. Q. Were you aware of the  
14 fact that occupancy was declining in -- at certain  
15 of the CaraVita facilities in 2008?

16 A. Yes. My recollection was  
17 that occupancy has declined in the portfolio, as  
18 well as in our entire portfolio.

19 100. Q. And were you generally  
20 aware in late 2008 that at least at certain of the  
21 CaraVita facilities occupancy was declining to the  
22 point that it was -- ALC was close to becoming out  
23 of compliance with certain of the covenants?

24 A. I understand we were  
25 tight in some situations but have operational

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1 improvement plans in place as described by  
2 management to address those situations.

3 101. Q. And what did Ms. Bebo --  
4 and I take it when you say "management", that  
5 includes Ms. Buono. Correct?

6 A. It will be primarily Ms.  
7 Bebo.

8 102. Q. And what -- first of all,  
9 did Ms. Bebo say there were any reasons in  
10 particular for occupancy declining at the CaraVita  
11 facilities?

12 A. I do not recall  
13 specifically what Ms. Bebo said about specific  
14 facilities, but my recollection in terms of her  
15 explanations for the decline in occupancy in  
16 general is related to the economy, the employment  
17 rate type of situations.

18 103. Q. The economy and the  
19 employment rate, those were reasons that Ms. Bebo  
20 gave for occupancy declining at the CaraVita, or  
21 at ALC's facilities in general?

22 A. That's correct.

23 BY MR. TANDY:

24 104. Q. Around the time frame of  
25 2000 and -- late 2008?

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1 A. That's my recollection.

2 BY MR. HANAUER:

3 105. Q. Did Ms. Bebo ever say  
4 that the declining occupancy was a result of any  
5 factors within ALC's control?

6 A. Not that I can remember.

7 106. Q. And what did Ms. Bebo say  
8 about her plans to improve occupancy at the  
9 CaraVita facilities?

10 A. Again, I do not recall  
11 any specifics as it pertains to the CaraVita  
12 properties, but a number of initiatives that she  
13 has explained with respect to the situation, the  
14 whole situation, are sales and marketing  
15 initiatives, working with referral sources, the  
16 veterans program.

17 Those are the kind of things  
18 that she have mentioned.

19 107. Q. When the board became  
20 aware that ALC was close to violating certain  
21 covenants at the CaraVita facilities, did Ms. Bebo  
22 say anything about the -- to the board about  
23 attempting to work with Ventas to try and obtain  
24 relief from certain of the covenants?

25 A. I only have vague

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1 recollection of one instance where she mentioned  
 2 talking to Ventas, which is in connection with a  
 3 potential purchase of two unrelated properties.

4 108. Q. Ms. Ng, I'm handing you a  
 5 document that's previously been marked as Exhibit  
 6 136, which is a copy of ALC's meeting minutes from  
 7 its February 23rd, 2009 board of directors  
 8 meeting, and I'd like to refer you to the bottom  
 9 of page 2 continuing to the top of page 3 where it  
 10 says:

11 With regard to the  
 12 CaraVita leases, Ms. Bebo  
 13 reported on the  
 14 performance of specific  
 15 buildings and reported  
 16 that management may seek  
 17 some relief from certain  
 18 of the covenants in  
 19 connection with the  
 20 requests from the  
 21 landlord that the company  
 22 consider the purchase of  
 23 two unrelated residences.

24 A. Right.

25 109. Q. Does looking at Exhibit

1 136 refresh your recollection of when Ms. Bebo  
 2 raised with the board the possibility of seeking  
 3 relief from certain of the Ventas lease covenants  
 4 from Ventas?

5 A. I think this is the  
 6 instance I was referring to as it's related to the  
 7 purchase of those two unrelated properties.

8 110. Q. So this idea to seek  
 9 relief from Ventas for certain of the covenants,  
 10 Ms. Bebo raised that in approximately late  
 11 February 2009?

12 A. Yeah, it appears so.

13 111. Q. And do you have any  
 14 recollection of Ms. Bebo telling the board that  
 15 she would seek relief from Ventas regarding the  
 16 covenants at any time prior to late February 2009?

17 A. No.

18 112. Q. Did Ms. Bebo ever discuss  
 19 with the board that one possibility for satisfying  
 20 the covenants in the Ventas lease would be to  
 21 unilaterally reduce the number of rooms that would  
 22 be considered occupied under the lease?

23 A. No.

24 MR. HANAUER: So why don't we  
 25 take a break? It is 9:47. Off the record,

1 please.

2 --- Break commencing at 9:47 a.m.

3 --- Upon resuming at 9:55 a.m.

4 BY MR. HANAUER:

5 113. Q. Back on the record at  
6 9:55.

7 Counsel has alerted me that I  
8 was inartful in asking my last question. So I'm  
9 going to try giving it another shot, and that is  
10 did Ms. Bebo ever raise with the board as one  
11 means to achieve compliance with the covenants in  
12 the Ventas lease was to reduce the number of rooms  
13 that were either considered occupiable or  
14 available for rent as they relate to the  
15 covenants?

16 A. No.

17 114. Q. And then I want to ask  
18 one follow-up question, and you said -- I believe  
19 you testified that at each either -- on a  
20 quarterly basis management reported to either the  
21 board or the audit committee how -- whether ALC  
22 was compliant with the Ventas lease covenants.

23 Do you remember that  
24 testimony?

25 A. Yes.

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1 115. Q. Did the audit committee  
2 or board pay any particular attention at the  
3 meetings to whether ALC was complying with the  
4 Ventas lease covenants?

5 A. Could you please repeat  
6 your question?

7 116. Q. Did either the board or  
8 the audit committee pay any particular attention  
9 to management's reports on compliance with the  
10 Ventas lease covenants?

11 A. We do review the package  
12 and we do listen to the presentation and we do ask  
13 questions, and obviously there is attention paid  
14 to the CaraVita covenant part of the presentation  
15 as well.

16 117. Q. And the board and the  
17 audit committee paid attention to the CaraVita  
18 covenant discussion at each meeting, each  
19 quarterly meeting?

20 A. Yes.

21 118. Q. When do you recall first  
22 becoming aware of the idea of including employees,  
23 ALC employees, in the Ventas covenant  
24 calculations?

25 A. Could you please repeat

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1 your question?

2 119. Q. When did you first become  
3 aware that ALC was including employees in the  
4 Ventas covenant calculations?

5 A. The first time that it  
6 registered for me that ALC are leasing units for  
7 employees would be in March 2011.

8 120. Q. Okay. And what's the  
9 context of you becoming aware of what you just  
10 said?

11 A. Sorry, if I may amend my  
12 answer, did I say March 2011? It should be May  
13 2011.

14 121. Q. And what was the context?

15 A. The context was the  
16 preaudit conference call with Grant Thornton for  
17 the first quarter of 2011.

18 122. Q. And I'm handing you a  
19 document that's been marked as Exhibit 646, and  
20 that's an April 27, 2011 e-mail, a Grant Thornton  
21 e-mail and a memorandum attached?

22 A. Right.

23 123. Q. And then do you see the  
24 memorandum on the second page of Exhibit 646 that  
25 references meeting with AC chair Friday, April

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1 Thornton say on that call as it relates to the  
2 Ventas lease covenants?

3 A. Jeff Robinson brought to  
4 my attention that ALC is leasing units for  
5 employees' use and they are in the process of  
6 getting all the supporting information from John  
7 Buono on the matter.

8 He also indicated to me that  
9 they have reviewed the accounting treatment on  
10 that and that the revenues are netted out such  
11 that the bottom line external revenues are not  
12 overstated.

13 We also agreed that he should  
14 continue his follow-up with management and this  
15 should be brought up at the audit committee  
16 meeting for the first quarter, which would take  
17 place in a few days.

18 130. Q. And you said that Mr.  
19 Robinson said that ALC was leasing units for  
20 employees at the CaraVita facilities.

21 Did Mr. Robinson give you any  
22 indication about the number of employees that were  
23 leasing units at the CaraVita facilities?

24 A. I do not recall any  
25 number being specifically mentioned.

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1 131. Q. And based on your  
 2 conversations with Mr. Robinson, did you have an  
 3 understanding of whether -- the amount of  
 4 employees leasing rooms at those facilities?

5 A. No, I do not recall any  
 6 numbers being mentioned.

7 132. Q. Did Mr. Robinson say  
 8 anything about the fact that for the ALC employees  
 9 who were leasing units at the CaraVita facilities,  
 10 that ALC would include those employees in the  
 11 Ventas covenant calculations?

12 A. I do not recall any  
 13 specific, explicit words like that.

14 133. Q. Did you have a personal  
 15 understanding or a belief about whether the ALC  
 16 employees leasing units at the CaraVita facilities  
 17 were included in the covenant calculations?

18 A. I have assumed that if  
 19 they are included in the occupancy, that they will  
 20 enter into the covenant calculation.

21 134. Q. But that was an  
 22 assumption that you had as opposed to something  
 23 that Mr. Robinson told you, correct?

24 A. I do not have any  
 25 explicit -- I do not recall any explicit language.

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1 135. Q. This April 2011 call with  
 2 Grant Thornton, was this the first time that Grant  
 3 Thornton alerted you to the fact that ALC was  
 4 leasing units for employees at the CaraVita  
 5 facilities?

6 A. That's my recollection.

7 136. Q. And you said you had the  
 8 assumption that employees for whom ALC was leasing  
 9 units, that they were included in the covenant  
 10 calculations. That was your assumption, correct?

11 A. Yes.

12 137. Q. Did you have any reason  
 13 to believe that the employees being included in  
 14 the covenant calculations did not actually stay at  
 15 the CaraVita facilities?

16 A. No.

17 138. Q. What was your belief at  
 18 this time as to the amount of employees that --  
 19 for whom ALC was leasing rooms at the CaraVita  
 20 facilities? Do you think it was a large number?  
 21 A small number?

22 A. I did not even think  
 23 about the number. I just think about it as ALC  
 24 leasing units legitimately for people who have  
 25 legitimate business purpose to be there on site

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1 for company business. I did not really  
2 consciously think about a number. But, you know,  
3 thinking about it now, it cannot be big. Like,  
4 practically speaking, it cannot be big, but I --

5 BY MR. TANDY:

6 139. Q. Why can't it not be big,  
7 practically speaking?

8 A. Because to be there  
9 legitimately to do business, there's only certain  
10 kinds of business that you would have people go  
11 there to do. I'm not sure at the time I even  
12 consciously trying to derive a number, but at the  
13 back of my mind, like, the concept, under that  
14 concept it shouldn't be an army. Like...

15 BY MR. HANAUER:

16 140. Q. On this call with Mr.  
17 Robinson in late April 2011, did anyone from Grant  
18 Thornton tell you the number of employees that ALC  
19 was renting or leasing rooms for at the CaraVita  
20 facilities?

21 A. I do not recall any  
22 number being mentioned.

23 141. Q. Did -- on this call, did  
24 Mr. Robinson or anyone from Grant Thornton tell  
25 you that without leasing rooms for its employees

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1 at the CaraVita facilities ALC would be failing  
2 certain covenants with Ventas?

3 A. I do not recall that.

4 142. Q. Do you have any reason to  
5 believe that Mr. -- anyone from Grant Thornton  
6 told you that?

7 A. No.

8 143. Q. Did anyone from Grant  
9 Thornton on that call tell you that ALC was  
10 leasing rooms at the CaraVita facilities for --  
11 between fifty and a hundred employees at any given  
12 time? Did Grant Thornton say that?

13 A. Not that I can recall  
14 that.

15 144. Q. Do you have any reason to  
16 believe Grant Thornton said that?

17 A. No.

18 145. Q. Did -- on that April call  
19 with Grant Thornton, did anyone tell you that ALC  
20 had submitted documents to Grant Thornton showing  
21 that ALC had failed certain covenants for the  
22 CaraVita facilities and that ALC had to later  
23 submit revised materials showing that it was now  
24 passing the covenants?

25 A. No.

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1 146. Q. At this April 2011 call  
2 with Grant Thornton, did anyone tell you that  
3 Grant Thornton had asked management for a specific  
4 representation in their representation letter  
5 regarding the CaraVita lease covenants but that  
6 management had refused that request?

7 A. So if I may clarify the  
8 question, so this is the April 11th meeting?

9 147. Q. Correct.

10 A. No.

11 BY MR. TANDY:

12 148. Q. April 2011.

13 A. April 2011 meeting?

14 149. Q. Right.

15 A. Yes. No.

16 BY MR. HANAUER:

17 150. Q. And just so I have a  
18 clear record on this, so at this April 2011, was  
19 it a call or a meeting?

20 A. It was a call.

21 151. Q. On this April 2011 call,  
22 no one from Grant Thornton told you that Grant  
23 Thornton had wanted a specific representation from  
24 management in the rep letter regarding the  
25 CaraVita covenants but that management had refused

1 that request; is that correct?

2 A. That's correct.

3 152. Q. So after that call with  
4 Mr. Robinson on April, or approximately April  
5 29th, 2011, did you speak with anyone?

6 A. Yes. I had my preaudit  
7 conference call with the CFO, John Buono.

8 153. Q. And what did Mr. Buono  
9 say on that call as it relates to the Ventas lease  
10 covenants?

11 A. He said to me a number of  
12 things.

13 He -- in response to my  
14 question, he acknowledged that the company was  
15 leasing units for employees. He says that that's  
16 consistent with prior practice and what the  
17 previous operator has been doing. He says that  
18 this is something that has agreement from Ventas.  
19 The CEO has met with Ventas and there is written  
20 confirmation that says that this is acceptable to  
21 Ventas.

22 He also indicated that Eric  
23 Fonstad, who is the in-house legal counsel, has  
24 reviewed this and has opined that this is not  
25 inconsistent with the lease agreement.

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1                   He has also said that he has  
2 discussed the accounting treatment with Grant  
3 Thornton and that the revenues are netted out such  
4 that the external revenues are not overstated. So  
5 this is the approach.

6                   Then the second thing he went  
7 to is -- I said, Grant Thornton wants all these  
8 documentation. Have you provided them? So he  
9 explained to me that this, all the documentation,  
10 has previously been provided and reviewed by  
11 Melissa Koeppel, who was the audit partner  
12 previously, and she has no issue with it. The  
13 only reason why Grant Thornton is raising it now  
14 is because Jeff Robinson has just come on to the  
15 file as a result of the new partner, audit partner  
16 rotation, and he's new. He hasn't seen the  
17 documentation and once he's seen all the  
18 documentation, he will be fine with it.

19 154.           Q.   And in this phone call  
20 with Mr. Buono, did he explicitly tell you that  
21 the ALC employees, for whom rooms were being  
22 leased at the CaraVita facilities, were being  
23 included as occupants in the covenant  
24 calculations?

25                   A.   I don't recall any

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1 explicit language like that or linkage like that.

2 155. Q. Did Mr. Buono tell you  
 3 the number of employees that ALC was leasing rooms  
 4 for at the CaraVita facilities?

5 A. I don't recall any  
 6 specific number being mentioned.

7 156. Q. Did he ever give -- did  
 8 he give you an indication that it was a number  
 9 over, above -- in the range of fifty to a hundred?

10 A. I don't recall any range  
 11 being given.

12 157. Q. Did Mr. Buono say  
 13 anything to you about the fact that there were  
 14 employees for whom ALC was leasing rooms at the  
 15 CaraVita facilities even though those employees  
 16 never travelled to the CaraVita facilities?

17 A. No.

18 158. Q. And did Mr. Buono tell  
 19 you that ALC was including in the covenant  
 20 calculations employees who did not actually visit  
 21 the CaraVita facilities?

22 A. No.

23 159. Q. And what happens? Was  
 24 there then a board meeting following your call  
 25 with Mr. Buono, or an audit committee meeting?

1                   A.    Yes, there was an audit  
2   committee meeting following those preaudit  
3   conference calls.

4   160.            Q.    So this would have been  
5   late April/early May 2011?

6                   A.    It is early May 2011.

7   161.            Q.    And at that meeting did  
8   Mr. -- what did Mr. Robinson or Grant Thornton say  
9   in regards to ALC leasing units at the CaraVita  
10  facilities for its employees?

11                  A.    Mr. Robinson reported  
12  orally on this matter. I do not recall his  
13  specific words, but the general -- my general  
14  recollection is that he reported on the fact that  
15  ALC is leasing units for employees. He reported  
16  on the accounting treatment of it in terms of  
17  netting out the revenue. He reported that Grant  
18  Thornton has reviewed all the working paper and  
19  the supporting documentation and is satisfied with  
20  the approach and have no issue with it.

21  162.            Q.    And at that meeting did  
22  Mr. Robinson or anyone from Grant Thornton  
23  explicitly tell the audit committee or the board  
24  of directors that when ALC was leasing units for  
25  its employees at the CaraVita facilities, that ALC

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1 was including those employees or those units in  
2 the Ventas covenant calculations?

3 A. I cannot recall or do not  
4 recall any specific linkage or explicit linkage  
5 there.

6 163. Q. Can you -- do you recall  
7 him explicitly mentioning the inclusion of  
8 employees in the Ventas -- of ALC employees in the  
9 Ventas covenant calculations?

10 A. I do not have really  
11 recollection of his specific wording and as such I  
12 do not recollect any specific linkage that he has  
13 made to the covenant calculation.

14 164. Q. Or any specific  
15 reference? Well, do you recall any specific  
16 reference to ALC employees being included in the  
17 covenant calculations by Grant Thornton?

18 A. I cannot recall the  
19 specific remarks that he made.

20 165. Q. And this board or audit  
21 committee meeting in late April/early May 2012,  
22 was this the first time that you recall it being  
23 discussed that ALC was leasing units for its  
24 employees at the CaraVita facilities?

25 MR. KOCORAS: If I may

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1 interject, you mentioned April or May 2012. I  
2 think you misspoke.

3 MR. HANAUER: I'm sorry,  
4 counsel.

5 MR. KOCORAS: That's okay.

6 MR. HANAUER: Thank you.

7 BY MR. HANAUER:

8 166. Q. So this April or May 2011  
9 audit committee meeting or board meeting, was this  
10 the first time you recall the leasing of units for  
11 employees at the CaraVita facilities being  
12 discussed at a board or audit committee meeting?

13 A. I have a very vague  
14 recollection of once prior to this May 2011 in  
15 terms of this mention of leasing units for  
16 employees at the CaraVita units, although I cannot  
17 place exactly when prior to the May 2011 meeting.

18 BY MR. TANDY:

19 167. Q. Is that the extent of  
20 your recollection?

21 A. Yes. My recollection is  
22 the comment was made by Ms. Bebo at most likely a  
23 board meeting whereby this is mentioned as she has  
24 agreement from Ventas that we can continue the  
25 prior practice of leasing units for employees who

1 have business.

2 168. Q. Legitimate business  
3 reasons to be at the properties?

4 A. Legitimate business  
5 reasons at those sites, yeah.

6 BY MR. HANAUER:

7 169. Q. And as part of that  
8 recollection, that vague recollection that you  
9 just referenced, did Ms. Bebo say that ALC was  
10 including employees in the Ventas covenant  
11 calculations?

12 A. I don't have any specific  
13 recollection of any linkage being made.

14 170. Q. And at this May -- late  
15 April/early May 2011 board meeting, did -- when  
16 Mr. Robinson brought up the leasing of units for  
17 ALC employees at the CaraVita facilities, did  
18 anyone from ALC say that employees who did not  
19 visit the CaraVita properties were being included  
20 in the covenant calculation?

21 A. No.

22 171. Q. At that meeting did  
23 anyone say that the same employee was included for  
24 the purpose of the covenant calculations as an  
25 occupant of multiple facilities at the same time?

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1 A. No.

2 172. Q. At that late April/early  
3 May 2011 meeting, did anyone say that ALC was  
4 including in the Ventas covenant calculations  
5 people who were neither ALC employees nor  
6 residents of the facilities?

7 A. No.

8 173. Q. And at that late  
9 April/early May 2011 audit committee or board  
10 meeting, did anyone say that friends and family  
11 members of ALC employees were being included in  
12 the Ventas covenant calculations?

13 A. No.

14 BY MR. TANDY:

15 174. Q. Did Mr. Robinson at the  
16 late April/early May 2011 audit committee meeting  
17 mention the number of units that ALC was leasing  
18 for employees?

19 A. I don't recall any  
20 specific number being mentioned.

21 175. Q. Did Mr. Robinson at the  
22 meeting, the late April/early May 2011 audit  
23 committee meeting, mention that ALC for that  
24 particular quarter had initially flunked one of  
25 the covenants in material that it had provided to

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1 ALC and subsequently had to go back and locate  
2 additional employees in order to meet those  
3 covenants?

4 MR. KOCORAS: You may have  
5 misspoken. You referred to materials provided to  
6 ALC.

7 BY MR. TANDY:  
8 176. Q. Sorry about that. Let me  
9 go back.

10 Did Mr. Robinson in the late  
11 April/early May 2011 audit committee meeting tell  
12 the audit committee that ALC in materials provided  
13 to Grant Thornton had initially flunked one of the  
14 covenant calculations and had to provide revised  
15 covenant calculations in order to meet all of the  
16 covenants?

17 A. No.

18 177. Q. And did Mr. Robinson  
19 during that April, late April/early May 2011 audit  
20 committee meeting, did he tell the audit committee  
21 that originally the auditors or Grant Thornton had  
22 asked for a representation, specific  
23 representation in the rep letter, that Ventas had  
24 agreed to allow employees to be included in the  
25 covenants and that ALC had refused to agree or

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1 allow that representation in the rep letter?

2 A. No.

3 BY MR. HANAUER:

4 178. Q. Following the late  
5 April/early May 2011 board or audit committee  
6 meeting, between that time and March 2012, do you  
7 recall any other discussions at board or audit  
8 committee meetings about the leasing of units at  
9 the Ventas facilities to ALC employees or the  
10 inclusion of ALC employees in the covenant  
11 calculations?

12 A. I have recollection of  
13 one instance whereby the leasing of units for  
14 employees came up in a meeting, board meeting, but  
15 I can't recall whether it's the August meeting or  
16 the November meeting --

17 179. Q. And what was your  
18 recollection?

19 A. -- 2011.

20 180. Q. What was your  
21 recollection at that meeting?

22 A. My recollection was  
23 Laurie was talking about all the operational  
24 improvements that are being made, you know, at  
25 these CaraVita units, and they also indicated that

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1 they're still leasing units for employees.

2 181. Q. And that instance that  
 3 you just testified to, did Ms. Bebo also tell the  
 4 board or audit committee meeting, the board or  
 5 audit committee, that ALC was including in the  
 6 covenant calculations the employees for whom ALC  
 7 was leasing units at the CaraVita facilities?

8 A. I do not recall any  
 9 specific or explicit linkage being mentioned.

10 182. Q. You used the word  
 11 "linkage". Do you recall Ms. Bebo explicitly  
 12 telling the board at any time prior to March 2012  
 13 that ALC is including employees in the Ventas  
 14 covenant calculations?

15 A. I do not recall that.

16 183. Q. I want to talk about some  
 17 items that Ms. Bebo has testified to regarding the  
 18 inclusion of employees in the covenant  
 19 calculations, and I want to relay to you some of  
 20 the things she said and then ask for your views on  
 21 those comments.

22 Ms. Bebo testified that prior  
 23 to a February 2009 board meeting, she met in her  
 24 office with John Buono and Mel Rhineland and  
 25 explained to Mr. Rhineland that ALC was having

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1 challenges meeting covenants in the Ventas lease  
2 and that ALC had two options, either to go to  
3 Ventas and try and negotiate relief from those  
4 covenants or to begin including employees who  
5 visited the properties in the covenant  
6 calculations.

7 Ms. Bebo continued. Then Mr.  
8 Rhinelander leaves Ms. Bebo's office, goes to meet  
9 David Hennigar in the boardroom next door, comes  
10 back in Ms. Bebo's office and said, after  
11 discussing the matter with Mr. Hennigar, Mr.  
12 Hennigar wanted to go with the option of including  
13 in the covenant calculations employees for whom  
14 rooms were leased at the CaraVita facilities.

15 Did Ms. Bebo ever tell you  
16 anything to the substance or effect of what I just  
17 described for you?

18 A. No.

19 184. Q. Did anyone else?

20 A. No.

21 185. Q. Ms. Bebo then testified  
22 that at the February 23rd, 2009 board meeting she  
23 -- Mr. Hennigar says in front of the entire board  
24 that the board has discussed the idea of leasing  
25 units to employees and including those employees

1 in the covenant calculations, so there's no need  
2 to go into anymore details regarding that  
3 practice.

4 Did Mr. Hennigar ever say  
5 something to that substance or effect at the  
6 February 2009 board meeting?

7 A. I do not recall that.

8 186. Q. And Ms. Bebo also says at  
9 that same board meeting, Mr. Hennigar says to her  
10 and the board that the board has already discussed  
11 the matter of leasing units to employees and -- or  
12 leasing units for employees, including those  
13 employees in the covenant calculation, and that  
14 the board, the whole board, is fine with that  
15 approach.

16 Did Mr. Hennigar say that at  
17 the February 2009 board meeting?

18 A. I do not remember that.

19 187. Q. Do you have any reason to  
20 believe he said that?

21 A. No.

22 188. Q. I next want to go over a  
23 variety of items that Ms. Bebo says that she told  
24 ALC's board of directors.

25 At any time prior to March

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1 2012, did Ms. -- did anyone tell the board of  
2 directors that Ventas had agreed that anyone could  
3 be included in the Ventas covenant calculations as  
4 long as they had a reason to visit one of the  
5 Ventas properties?

6 A. No.

7 189. Q. Did Ms. Bebo ever tell  
8 you that?

9 A. No.

10 190. Q. Prior to March 2012, did  
11 anyone tell the board of directors or audit  
12 committee meeting that ALC was including in the  
13 covenant calculations people who did not actually  
14 visit the CaraVita properties during the period in  
15 question?

16 A. No.

17 191. Q. Did Mr. Bebo ever tell  
18 you that?

19 A. No.

20 192. Q. Prior to March 2012, did  
21 anyone tell the board of directors or audit  
22 committee that ALC was using the same people at  
23 multiple properties over the same time period for  
24 the purpose of the Ventas covenant calculations?

25 A. No.

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1 193. Q. Did Ms. Bebo ever tell  
2 you that?  
3 A. No.  
4 194. Q. Prior to March 2012, did  
5 anyone ever tell ALC's board or audit committee  
6 that ALC was including in the covenant  
7 calculations people who were neither employees of  
8 ALC nor residents of the CaraVita facilities?  
9 A. No.  
10 195. Q. Did Ms. Bebo ever tell  
11 you that?  
12 A. No.  
13 196. Q. Prior to March 2012, did  
14 anyone tell ALC's board or audit committee that  
15 ALC was including in the covenant calculations  
16 former employees who had been fired by the  
17 company?  
18 A. No.  
19 197. Q. Did Ms. Bebo ever tell  
20 you that?  
21 A. No.  
22 198. Q. Prior to March 2012, did  
23 anyone tell ACL's board or audit committee that  
24 ALC was including in the covenant calculations  
25 newly hired employees who had not yet been

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1 onboarded or actually hired by the company?  
2 A. No.  
3 199. Q. Did Ms. Bebo ever tell  
4 you that?  
5 A. No.  
6 200. Q. Prior to March 2012, did  
7 anyone tell ALC's board or audit committee that  
8 ALC was including in the Ventas covenant  
9 calculations Ms. Bebo's husband, one of her  
10 husband's friends or her parents?  
11 A. No.  
12 201. Q. Did Ms. Bebo ever tell  
13 you that?  
14 A. No.  
15 202. Q. Prior to March 2012, did  
16 anyone tell the board or audit committee that ALC  
17 was including in the covenant calculations  
18 relatives of one of Ms. Bebo's friends who was an  
19 ALC executive?  
20 A. No.  
21 203. Q. Did Ms. Bebo ever tell  
22 you that?  
23 A. No.  
24 204. Q. Prior to March 2012, did  
25 anyone tell ALC's board or audit committee meeting

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1 that Ventas has agreed that an unlimited number of  
2 employees could be included in the covenant  
3 calculations?

4 A. No.

5 205. Q. Did Ms. Bebo ever tell  
6 you that?

7 A. No.

8 206. Q. Prior to March 2012, did  
9 anyone tell the audit committee or board of  
10 directors that ALC was using between fifty to a  
11 hundred employees in the covenant calculations?

12 A. No.

13 207. Q. And prior to March 2012  
14 did anyone tell ALC's board or audit committee  
15 that without including employees in the covenant  
16 calculations, that ALC would fail certain  
17 covenants in the Ventas lease?

18 A. No.

19 208. Q. Ms. Bebo has also  
20 testified that at a board meeting following the  
21 February 2009 meeting and prior to March 2012, Mr.  
22 Alan Bell requested the board of directors be made  
23 aware of the difference between the actual  
24 occupancy at the CaraVita facilities and the  
25 occupancy figures being reported to Ventas.

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1 Did that ever happen prior to  
2 March 2012?

3 A. I don't recall that.

4 209. Q. Do you have any reason to  
5 believe it did?

6 A. No.

7 210. Q. Prior to March 2012, did  
8 anyone tell the audit committee or the board of  
9 directors that Ventas was receiving occupancy  
10 figures for the CaraVita properties that did not  
11 reflect actual occupancy at the CaraVita  
12 facilities?

13 A. Could you please repeat  
14 the question?

15 211. Q. Prior to March 2012, did  
16 anyone tell the board of directors or the audit  
17 committee that there was a difference between the  
18 actual occupancy at the CaraVita facilities and  
19 the occupancy figures being reported to Ventas?

20 A. No.

21 212. Q. Ms. Ng, I'm handing you a  
22 document that's previously been marked as SEC  
23 Exhibit 5, and does Exhibit 5, does that appear to  
24 contain at least portions of the materials that  
25 the board of directors received in advance of the

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1 paper, I don't know, but the discussion generally  
 2 focussed on this, highlights, and not the appendix  
 3 at all.

4 218. Q. So what portions of the  
 5 board materials did you review in advance of board  
 6 and audit committee meetings? You reviewed the  
 7 PowerPoint, correct?

8 A. Absolutely.

9 219. Q. Did you review the  
 10 detailed financial information contained in the  
 11 appendices?

12 A. Not really. If I may  
 13 amend my answer, when I say, "not really", it's  
 14 because at times if there is a specific issue with  
 15 respect to an asset impairment or with respect to  
 16 bad debt, you know, then you may flip to the more  
 17 legible pages and try to get a little bit more  
 18 specifics, but those would be only when there are  
 19 issues identified, you know, where you can get  
 20 some, you know, further background.

21 220. Q. So except in limited  
 22 instances when you needed more detailed  
 23 information, your general practice was not to  
 24 review the detailed financial information  
 25 contained in the appendices?

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1 A. That's correct.  
2 BY MR. TANDY:  
3 221. Q. And those limited  
4 instances were when there was an issue identified  
5 in the PowerPoint presentation?  
6 A. Exactly. Exactly.  
7 BY MR. HANAUER:  
8 222. Q. And I'd like to refer you  
9 to page 2786 of Exhibit 5.  
10 A. Sorry, page?  
11 223. Q. 2786.  
12 A. Okay. Yes.  
13 224. Q. And this is -- do you see  
14 it's a table?  
15 A. Yes.  
16 225. Q. Titled CaraVita  
17 Covenants?  
18 A. Yes.  
19 226. Q. And is this table, this  
20 is the PowerPoint portion of the board book;  
21 correct?  
22 A. Yes. Yes.  
23 227. Q. And did the board -- did  
24 the PowerPoint presentations in the board book  
25 typically contain a table devoted to the CaraVita

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1 covenants?

2 A. Yes.

3 228. Q. Did anyone ever alert you  
4 to the fact that the detailed occupancy  
5 information or the detailed information contained  
6 in the appendices contained information regarding  
7 the CaraVita covenants that was different than the  
8 information presented in the PowerPoint?

9 A. No.

10 229. Q. Did you ever -- prior to  
11 March 2012, did you ever ascertain a difference  
12 between the table contained in the PowerPoint  
13 about the CaraVita covenants and the detailed  
14 financial information in the appendices?

15 A. No.

16 230. Q. Prior to March 2012, was  
17 the board of directors or audit committee apprised  
18 by either management or Grant Thornton of the  
19 number of employees for whom ALC was leasing units  
20 at the CaraVita facilities?

21 A. I don't recall any  
22 specific number.

23 231. Q. You have no recollection  
24 of management or Grant Thornton informing the  
25 board of directors or audit committee about the

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1 as Exhibit 492, and the letter contained in  
2 Exhibit 492, is that a copy of the letter that ALC  
3 did send to the SEC on August 5, 2011?

4 A. I believe it is.

5 255. Q. And did either the board  
6 or the audit committee review that letter before  
7 it was sent to the SEC?

8 A. Yes. It was reviewed at  
9 the audit committee meeting just prior to that.

10 256. Q. And I'd like to refer you  
11 to the third page of the letter which has the  
12 Bates number ALC 122837.

13 A. Yes.

14 257. Q. And do you see the first  
15 sentence on that page it says:

16 Based upon current and  
17 reasonably foreseeable  
18 events and conditions,  
19 the company does not  
20 believe that it has a  
21 reasonably likely degree  
22 of risk of breach of the  
23 CaraVita covenants?

24 A. Yes.

25 258. Q. And were you aware that

1 A. Yeah, which my discussion  
 2 with Grant Thornton would be March 2012.

3 268. Q. And what -- could you  
 4 tell me about that discussion?

5 A. In the preaudit  
 6 conference call with Jeff Robinson, he mentioned  
 7 to me that the number of employees ALC is leasing  
 8 units for is growing and he would be requesting  
 9 management for additional representation on that.

10 269. Q. And this conversation  
 11 with Mr. Robinson, was this in the days prior to  
 12 the March 7, 2012 audit committee meeting?

13 A. Yes, it is just prior to  
 14 that.

15 270. Q. And what else did Mr.  
 16 Robinson tell you?

17 A. No, I basically indicated  
 18 to him that, sure, you know, just talk to John  
 19 about it, and that was how we left it.

20 271. Q. And what did you do next  
 21 after speaking with Mr. Robinson?

22 A. In terms of that  
 23 conversation, because it was just prior, right  
 24 afterwards I went to the airport to catch the  
 25 plane and I caught John Buono the following

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1 morning just before the board and audit committee  
2 meeting. That's after I finished, I think, my  
3 special committee meeting, and I caught John at  
4 the door before going into the meeting and I said,  
5 John, has Jeff talked to you, you know, about this  
6 rep letter? He said, don't worry about it. I've  
7 given him additional documentation, and the  
8 written communication or the written confirmation  
9 from -- that Laurie had with Ventas, they are  
10 satisfied with it and no longer require additional  
11 management representation.

12 272. Q. And in between speaking  
13 with Mr. Robinson and Mr. Buono in advance of the  
14 March 7, 2012 audit committee meeting, did you  
15 speak with any other of the directors?

16 A. Yes. I flew into  
17 Milwaukee that evening. I got there, have a late  
18 dinner. Then David Hennigar, who is the chairman  
19 of the board, asked to have a few words with me.

20 So we actually went somewhere  
21 in the hotel and had a conversation. He mentioned  
22 to me that during the due diligence process, as it  
23 pertains to the data room and the potential  
24 buyers, an issue has surfaced with respect to  
25 employees being leased units, and he indicated to

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1                   So I'm not sure I consciously  
2     calculated a number in terms of employees or  
3     revenues, but 2 million was, I mean, it was a bit  
4     of a, really a bit of a surprise to me.

5     276.                   Q.     And did Mr. Hennigar tell  
6     you that the compensation committee earlier that  
7     day had discussed this two-million-dollar issue  
8     with Ms. Bebo and Mr. Buono?

9                   A.     Very briefly.

10    277.                   Q.     And were you present for  
11    that compensation committee meeting?

12                   A.     I don't believe I was  
13    because I'm not a member of that committee and I  
14    wouldn't have flown into Milwaukee by then.

15    278.                   Q.     And I take it then that  
16    you weren't present for the compensation  
17    committee's discussions on March 6, 2012 with Ms.  
18    Buono or Mr. -- Ms. Bebo or Mr. Buono?

19                   A.     That's correct.

20    279.                   Q.     So...

21                   BY MR. TANDY:

22    280.                   Q.     Did Mr. Robinson in the  
23    phone call, preaudit committee phone call with Mr.  
24    Robinson, disclose to you that a key assumption  
25    that the auditors had been using in order to sign



1 off on the inclusion of employees in the covenant  
2 calculations had turned out to be -- the auditors  
3 had learned that they were mistaken about that  
4 assumption in the fourth quarter of 2011?

5 A. No.

6 BY MR. HANAUER:

7 281. Q. Specifically, did Mr.  
8 Robinson in advance of the March 7th, 2012 audit  
9 committee meeting tell you that Grant Thornton had  
10 previously been under the belief that Ventas was  
11 receiving information showing the number of  
12 employees being included in covenant calculations  
13 but then subsequently Grant Thornton learned that  
14 Ventas was not receiving that information?

15 A. No.

16 282. Q. Did Mr. Robinson ever  
17 tell you anything to that substance or effect?

18 A. No.

19 283. Q. Did anyone from Grant  
20 Thornton tell you anything to that substance or  
21 effect?

22 A. No. No.

23 284. Q. So I would like to ask  
24 you about the March 7th, 2012 audit committee  
25 meeting.

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1 A. Okay.

2 285. Q. Did you ask Mr. Robinson  
3 or Grant Thornton any questions at that audit  
4 committee meeting relating to the issues we've  
5 discussed today?

6 A. Not explicitly, but I did  
7 ask him whether there are any issues that he would  
8 like to raise with the audit committee with  
9 respect to the year end audit. His response was  
10 that it was a very clean year end audit.

11 286. Q. Mr. Robinson said that to  
12 the audit committee?

13 A. Yes.

14 287. Q. And at that audit  
15 committee meeting, did Ms. Bebo or Mr. Buono  
16 volunteer any information regarding the inclusion  
17 of employees in the Ventas covenant calculations?

18 A. No.

19 288. Q. Was there any discussion  
20 of the inclusion of employees in the Ventas  
21 covenant calculations at the March 7th audit  
22 committee or board meetings that you attended?

23 A. Not at the audit  
24 committee and at the board meeting.

25 289. Q. To the extent that

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1 information was discussed at a compensation  
2 committee meeting on March 7, 2000 -- March 6 or  
3 7, 2012, you would not have attended that meeting  
4 because you weren't a member of the compensation  
5 committee; correct?

6 A. That's correct. If I may  
7 just clarify here, when you asked the last  
8 question, definitely there was no discussion about  
9 employee leasing at the audit committee meeting,  
10 and I do not recall any discussion of that at the  
11 board meeting.

12 290. Q. Thank you. Do you know  
13 if any members of the board of directors attempted  
14 to investigate the issues raised at the March 6  
15 compensation committee meeting regarding employee  
16 leasing?

17 A. I understand that Alan  
18 Bell was going to look into it.

19 291. Q. Mr. Bell is a corporate  
20 attorney here in Toronto?

21 A. Yes.

22 292. Q. And did you take any  
23 active role in Mr. Bell's investigation?

24 A. No.

25 293. Q. And during the March

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1 through April 2012 time period, were you -- where  
 2 were you during that time? Were you here in  
 3 Canada that whole time?

4 A. I was actually away for  
 5 close to four weeks for a long arranged family  
 6 reunion in Asia.

7 294. Q. It was a personal trip as  
 8 opposed to a business trip?

9 A. Yes. Yes.

10 295. Q. And do you know the  
 11 approximate dates of that trip?

12 A. To the best of my  
 13 knowledge, it's from March 22nd to April 17th.

14 296. Q. And why is it that you  
 15 are -- is there a reason you're able to provide  
 16 those dates in particular?

17 A. Yeah. There was an  
 18 e-mail from my husband to his cousin in LA,  
 19 because we typically have to advise her when we're  
 20 away because his mother lives in an assisted  
 21 living facility in LA. So if there is any issue,  
 22 she needs to know that we're not in town and need  
 23 to be able to make arrangements.

24 297. Q. So you were able to  
 25 review that e-mail and based on that e-mail,

1 determine the dates you were on vacation?  
 2 A. Exactly.  
 3 298. Q. Ms. Ng, I'm handing you a  
 4 document that's been marked as Exhibit 695.  
 5 A. Right.  
 6 299. Q. And do you see how  
 7 Exhibit 695 contains a memorandum from Alan Bell  
 8 dated April 3, 2012?  
 9 A. Right.  
 10 300. Q. Did you receive that  
 11 memorandum?  
 12 A. I have received a copy of  
 13 that memorandum.  
 14 301. Q. And Exhibit 695 reflects  
 15 that the memorandum was sent to you via e-mail on  
 16 April 4, 2012?  
 17 A. Right.  
 18 302. Q. Do you know when you  
 19 first reviewed the memorandum?  
 20 A. I couldn't tell you when  
 21 I exactly reviewed it. As I was in Asia,  
 22 communication is sometimes -- especially when I  
 23 was on a cruise. So I couldn't tell you exactly  
 24 when I would have looked at it.  
 25 303. Q. You may not have reviewed

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1 it -- it sounds like you would not have reviewed  
2 it the day you received it?

3 A. I don't think I would  
4 have reviewed it the day I received it.

5 304. Q. And I want to reference  
6 the second bullet point of Mr. Bell's memorandum.

7 A. Right.

8 305. Q. It says:  
9 "Highly unlikely that  
10 Feb. 4/09 Bebo email re  
11 employees is a legal  
12 basis for inclusion of  
13 employees to meet their  
14 residence occupancy/  
15 income covenant in the  
16 leases".

17 A. Right.

18 306. Q. Do you see that?

19 A. Yes.

20 307. Q. When you received Mr.  
21 Bell's memorandum, did you know what this -- what  
22 he was talking about when he was referencing this  
23 Feb 4, '09 e-mail?

24 A. I understood it to be the  
25 written confirmation that management represent is

1 the Bebo e-mail that establishes Ventas'  
2 acceptance.

3 308. Q. And at the time you  
4 received this memorandum from Mr. Bell, had you  
5 seen Ms. Bebo's February 2009 e-mail?

6 A. I think I received a copy  
7 of that e-mail somewhere in around that time  
8 frame.

9 MR. HANAUER: Okay.

10 MR. KOCORAS: And if I may  
11 clarify to what Ms. Ng means "around that time  
12 frame", whether you're referring to February '09  
13 or --

14 THE WITNESS: Oh, no, no,  
15 March/April of 2012.

16 MR. KOCORAS: Thank you.

17 MR. HANAUER: Thank you,  
18 counsel.

19 BY MR. HANAUER:

20 309. Q. I'm handing you a  
21 document that's previously been marked as Exhibit  
22 199.

23 A. Right. Right.

24 310. Q. And do you see the e-mail  
25 on page ALC 80165?

1 A. Yes.

2 311. Q. And is it your  
3 understanding that this e-mail is the one  
4 referenced in Mr. Bell's April 3rd, 2012  
5 memorandum?

6 A. Yes.

7 312. Q. And I believe your  
8 testimony was that you did not see -- well, was  
9 the first time you saw this e-mail, the February  
10 4, 2009 e-mail, was the first time you saw that  
11 e-mail in the March/April 2012 time period?

12 A. That's correct.

13 313. Q. And did you have any  
14 thoughts on the e-mail after reviewing it?

15 A. I'm not -- I don't have  
16 legal expertise, but just from a layman's  
17 perspective, that looks pretty light.

18 314. Q. And when you say, "a  
19 layman's perspective", you actually have  
20 significant experience in the business world;  
21 correct?

22 A. That's correct, but when  
23 I talk about layman, I'm comparing myself with  
24 Alan Bell.

25 315. Q. Not a non --

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1 A. Not a...  
2 316. Q. Not an attorney?  
3 A. Yes.  
4 317. Q. And based on your  
5 professional opinion or your professional  
6 expertise and experiences, did you have a view on  
7 whether this February 4th, 2009 e-mail constituted  
8 an agreement by Ventas to allow ALC to include  
9 employees in the Ventas lease covenant  
10 calculations?  
11 MR. KOCORAS: I'll object  
12 solely to the extent that the question may be  
13 perceived as asking for a legal opinion.  
14 THE WITNESS: Yeah, which I'm  
15 not equipped.  
16 MR. HANAUER: And it's not  
17 meant to -- it is not meant to elicit a legal  
18 opinion.  
19 MR. KOCORAS: Understood.  
20 THE WITNESS: And I'll answer  
21 it in a layman term, which is I thought it was  
22 light.  
23 BY MR. HANAUER:  
24 318. Q. Could you expand on what  
25 you mean by that?

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1 A. I would seek further  
2 comfort level than that.

3 319. Q. From Ventas?

4 A. Yeah.

5 320. Q. And referring you back to  
6 the -- Mr. Bell's memorandum in Exhibit 695, the  
7 third bullet point on his memorandum says:

8 "J. Buono compliance  
9 certificate re patient  
10 revenue is clearly  
11 wrong."

12 A. Yes, I see that.

13 321. Q. Do you know what Mr. Bell  
14 was referring to?

15 A. Not at the time when I  
16 saw the memo.

17 322. Q. And do you know what the  
18 board of directors' reaction was to receiving Mr.  
19 Bell's memorandum?

20 A. I was not there at the  
21 meeting when this material was discussed, as I was  
22 in Asia. So I couldn't give you, you know, kind  
23 of firsthand comments in terms of their reaction.  
24 I would assume it would be concern.

25 BY MR. TANDY:

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1 323. Q. Did you have any  
2 discussions about the -- about employees being  
3 included in the covenant calculations with anyone  
4 between the March 7th board and audit committee  
5 meeting and when you got back from Asia in  
6 mid-April?

7 A. Between when I got back  
8 from Asia to when? Sorry, I just need to  
9 understand the time frame here.

10 BY MR. HANAUER:

11 324. Q. So the March 7th...

12 A. March 7th.

13 325. Q. ...2012...

14 A. Right.

15 326. Q. ...audit committee  
16 meeting...

17 A. Yeah.

18 327. Q. ...until the time you  
19 returned from Asia in mid-April 2012.

20 MR. TANDY: Excluding the  
21 receipt of Exhibit 695.

22 BY MR. HANAUER:

23 328. Q. During that time period,  
24 did you have any discussions that you can recall  
25 about the inclusion of employees in the Ventas

1 covenant calculations?  
2 A. Nothing significant that  
3 I can recall.  
4 329. Q. Referring back to Mr.  
5 Bell's memorandum...  
6 A. Right.  
7 330. Q. ...do you know how either  
8 Ms. Bebo or Mr. Buono responded to the receipt of  
9 this memorandum?  
10 A. I understand that Mr.  
11 Buono was very unhappy about this memo.  
12 331. Q. And how do you know that?  
13 A. Because of some  
14 subsequent conversations that Mr. Bell and myself  
15 had with him when we were talking about the  
16 following quarter and the issue and the  
17 disclosures.  
18 332. Q. Ms. Ng, I'm handing you a  
19 document that's previously been marked as Exhibit  
20 696.  
21 A. Right.  
22 333. Q. And did you receive the  
23 e-mail contained in Exhibit 696?  
24 A. Yes, I did.  
25 334. Q. It appears to be an

1 accurate copy, Exhibit 696?

2 A. Yes.

3 335. Q. And the phone call  
4 referenced in Exhibit 696 involving you and Mr.  
5 Bueno and Mr. Bell, is that the phone  
6 communication, the phone call that you had just  
7 testified about?

8 A. Yes.

9 336. Q. And could you tell us  
10 what was discussed on that phone call?

11 A. Yeah. I'm just going to  
12 have to... if I remember correctly, the purpose  
13 of that phone call was to really, to look at the  
14 whole ALC disclosure as it pertains to Ventas.

15 As you know, during that whole  
16 March-April period, huge issues with respect to  
17 our Ventas properties with respect to various  
18 regulatory notices and revocations, and given all  
19 that situation, we need to really very carefully  
20 consider the appropriate disclosure and any  
21 required accounting treatment prior to the first  
22 quarter.

23 So this conversation with John  
24 that Alan and I had was around the whole, you  
25 know, what should we be disclosing and should we

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1 be, you know, accounting for anything within this  
 2 whole construct of the situation with Ventas and  
 3 the lawsuit that they had filed.

4 Within this conversation the  
 5 issue of the -- John brought up the revenue  
 6 certificates, but the bulk of the conversation was  
 7 about the regulatory and the timing of the  
 8 disclosure, the appropriate disclosure.

9 So this certificate thing came  
 10 up by John, is basically saying that, hey, you  
 11 know, we've talked about all this, but what about  
 12 this, you know, and I think the rest of the  
 13 conversation is very much -- I think Alan had a  
 14 pretty good, you know, account, you know, of  
 15 basically John's views and what we responded with.

16 337. Q. And so this last sentence  
 17 in the fourth paragraph in Exhibit 696...

18 A. One, two, three, four,  
 19 yeah.

20 338. Q. ...where Mr. Bell writes:  
 21 Buono advised that he would not sign any  
 22 certificates, financial statements or any other  
 23 document until the board confirms that his  
 24 previous certificates were acceptable, what is Mr.  
 25 Bell writing there?

1           A.    Mr. Bell is really just  
2 relating what John has threatened the board with.  
3 It's basically unless you confirm that my previous  
4 certificates were acceptable, I'm not going to  
5 sign anymore financial statements.

6           339.           Q.    You mean the certificates  
7 that he sent to Ventas?

8           A.    Ventas, yes.  The  
9 certificate here, my recollection is that it  
10 refers to Ventas.

11          340.           Q.    And it was based on your  
12 view Mr. Buono was threatening the board of  
13 directors?

14          A.    I did agree that he was  
15 threatening the directors by saying that I'm not  
16 going to sign any financial statements.

17          341.           Q.    And did Mr. -- did the  
18 board take any action against Mr. Buono relating  
19 to his conduct?

20          A.    Yeah.  There were a  
21 number of things going on there with respect to  
22 all the regulatory issues, and of course very soon  
23 after that the whistleblower letter came.

24                        So the whole thing was almost,  
25 like, put to the investigation and no action was

1 going to be taken until, you know, things become a  
2 little bit more clear as to what is actually the  
3 issue.

4 BY MR. TANDY:

5 342. Q. No action with respect to  
6 Mr. Buono?

7 A. That's right. Sorry.  
8 Thank you for clarifying that.

9 BY MR. HANAUER:

10 343. Q. And it's my understanding  
11 that shortly after the whistleblower letter, Ms.  
12 Bebo was terminated. Correct?

13 A. She was terminated later  
14 on in May.

15 344. Q. 2012?

16 A. 2012. I'm sorry.

17 345. Q. And is there a reason why  
18 Mr. Buono was allowed to continue as the chief  
19 financial officer following Ms. Bebo's  
20 termination?

21 A. Yeah. Ms. Bebo was fired  
22 because of various operational and regulatory  
23 problems, which has become more and more clear  
24 throughout the course, you know, of the weeks, you  
25 know, before her termination, and given that it's



1 operational and regulatory problems which Ms. Bebo  
2 was responsible for, she was the person who was  
3 terminated and not Mr. Buono because, you know, he  
4 was not related to these, directly related to  
5 these operational and regulatory problems.

6 346. Q. I'm handing you a  
7 document that previously has been marked as  
8 exhibit -- a copy of which was previously marked  
9 as Exhibit 704. It has the Bates number ALC\_SEC  
10 6623 through 6624, and I want to refer you to the  
11 second page of Exhibit 704, the letter from  
12 Quarles & Brady to ALC dated April 26, 2012.

13 My first question is, were you  
14 involved in ALC's communications with Quarles &  
15 Brady regarding the subject of Exhibit 704?

16 A. No.

17 347. Q. Did you review Quarles &  
18 Brady's letter in Exhibit 704?

19 A. Afterwards?

20 348. Q. After receiving the  
21 letter.

22 A. I did look at it.

23 349. Q. And what was your  
24 response to the letter?

25 A. Again, not being counsel

1 or legal expert, I thought it was light.

2 350. Q. And did you discuss the  
 3 letter with anybody?

4 A. Not explicitly but, you  
 5 know, we all talked about the fact that we got a  
 6 letter.

7 351. Q. And what do you mean when  
 8 you considered -- when you say you considered the  
 9 letter to be light?

10 A. I was assuming that there  
 11 should be more legal arguments.

12 352. Q. Did you have any other  
 13 reaction to the letter?

14 A. And on -- just someone  
 15 mentioned to me, which is one of the thoughts that  
 16 came to my mind too, is Matt Flynn is a friend of  
 17 Laurie Bebo. I don't know whether that's true or  
 18 not, but this is what I heard, and obviously what  
 19 I heard, you know, is part of the things that was  
 20 in my mind when I read this.

21 353. Q. Rather than introduce the  
 22 whistleblower letter into the record, I would  
 23 rather just discuss it with you.

24 A. Yes.

25 354. Q. And did you receive a

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1 whistleblower communication on approximately May  
2 2nd, 2012?

3 A. Yes.

4 355. Q. And did the whistleblower  
5 communication, do you remember it stating that the  
6 writer -- do you remember that the whistleblower  
7 communication addressed the issues of employees  
8 being included in the Ventas covenant  
9 calculations?

10 A. Yes.

11 356. Q. And do you remember that  
12 the whistleblower communication stated that the  
13 whistleblower recognized that the list of  
14 employees included in those calculations was a  
15 sham?

16 A. Yes.

17 357. Q. Was this, the  
18 whistleblower letter, was that the first time you  
19 were aware that any ALC employee considered the  
20 list of employees in the covenant calculations to  
21 be a sham?

22 A. Yes.

23 358. Q. Was the whistleblower  
24 letter the first time anyone told you that  
25 included in the covenant calculations were

1 employees who occupied rooms in multiple buildings  
2 on the same day?

3 A. Yes.

4 359. Q. Was the whistleblower  
5 communication the first time anyone told you that  
6 employees were being included in the covenant  
7 calculations who did not actually travel to the  
8 properties in question during the relevant time  
9 period?

10 A. Yes.

11 360. Q. Was the whistleblower  
12 communication the first time you were told that  
13 included in the covenant calculations were  
14 individuals who were neither ALC employees nor  
15 residents of those facilities?

16 A. Yes.

17 361. Q. Was the whistleblower  
18 communication the first time you were told that  
19 included in the covenant calculation was Laurie  
20 Bebo's husband?

21 A. Yes.

22 362. Q. Her parents?

23 A. Yes.

24 363. Q. And a family friend?

25 A. Yes.

1 364. Q. And after receiving the  
2 whistleblower communication, did the board of  
3 directors retain a law firm to investigate the  
4 allegations?

5 A. That's correct.

6 MR. KOCORAS: You had  
7 mentioned the board of directors retaining?

8 BY MR. HANAUER:

9 365. Q. Well, let me ask a better  
10 question. After the whistleblower communication,  
11 was a law firm retained to investigate the  
12 allegations in the whistleblower communication?

13 A. Yes.

14 366. Q. And that was the Milbank  
15 law firm?

16 A. That's correct.

17 MR. KOCORAS: And just to  
18 clarify, it may have been that the audit committee  
19 retained investigators, to clarify Ms. Ng's  
20 response to the previous question.

21 THE WITNESS: Yeah, it was  
22 the board authorized the audit committee to retain  
23 the law firm.

24 BY MR. HANAUER:

25 367. Q. Oh, so it's your

1 understanding that Milbank had been retained by  
2 ALC's audit committee?

3 A. Initially, yeah.

4 MR. HANAUER: Let's go off the  
5 record at 11:38.

6 --- Off-the-record discussion at 11:38 a.m.

7 --- Upon resuming at 11:50 a.m.

8 BY MR. HANAUER:

9 368. Q. Let's go back on the  
10 record at 11:50.

11 I'm handing you a document  
12 that's been marked as Exhibit 697 and I want to  
13 refer you to the second page of the board minutes.

14 A. Right.

15 369. Q. And do you see the  
16 heading Ventas Transaction; subject: six?

17 A. Right.

18 370. Q. And at this board  
19 meeting, the board was discussing ways to resolve  
20 a lawsuit that Ventas had filed against ALC?

21 A. Right.

22 371. Q. And Ventas in that  
23 lawsuit had alleged that ALC had breached various  
24 covenants in the Ventas lease, correct?

25 A. That's correct.

1 382. Q. So was ALC willing to pay  
2 above market value for the CaraVita properties to  
3 settle Ventas' allegations that the covenants in  
4 the Ventas lease had been violated?

5 A. It's to settle the legal  
6 action, which included a whole bunch of issues and  
7 a lot of regulatory, you know, issues, as well as  
8 the covenant issue.

9 383. Q. The occupancy covenants?

10 A. Yes, and the covenant  
11 issue. And also, I think in consideration of the  
12 fact that I think ALC needs to, you know, rebuild,  
13 you know, the company and to have the legal  
14 actions behind us and be able to rebuild the  
15 operation, the regulatory relationship, you know,  
16 as well as kind of our brand would be very  
17 important.

18 384. Q. And that's why ALC was  
19 willing to pay above market value for the CaraVita  
20 properties?

21 A. Yes, because we believe  
22 that in consideration of all those other costs,  
23 you know, and potential issues, that this is, you  
24 know, the appropriate thing to do.

25 385. Q. It's my understanding

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1 that the board of directors, one of its functions  
 2 was to determine or to approve any discretionary  
 3 bonus that would be awarded to either Mr. Buono or  
 4 Ms. Bebo. Is that correct?

5 A. Yes, it's reviewed and  
 6 recommended by CNG and then approved by the board.

7 386. Q. So the CNG committee  
 8 would make a recommendation for the discretionary  
 9 bonus and then would -- the board would vote on  
 10 that recommendation?

11 A. Right.

12 387. Q. Had you personally known  
 13 that either Mr. Buono or Ms. Bebo was engaging in  
 14 fraud at the expense of either Ventas, the board  
 15 of directors or ALC's shareholders, would you have  
 16 voted to authorize any discretionary bonus for  
 17 either Mr. Buono or Ms. Bebo?

18 A. No.

19 388. Q. Based on your  
 20 interactions with and understanding of ALC's board  
 21 of directors, had the board of directors known  
 22 that either Mr. Buono or Ms. Bebo had engaged in  
 23 fraud, do you believe that the board of directors  
 24 would have authorized a discretionary bonus for  
 25 either Mr. Buono or Ms. Bebo?

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1 A. No.

2 389. Q. I want to ask you, Mr.  
3 David Hennigar, how long have you known him?

4 A. I've known him since I  
5 was appointed to the Extendicare board, which  
6 would be 2005.

7 390. Q. Do you have any reason to  
8 question Mr. Hennigar's credibility?

9 A. No.

10 391. Q. Do you know him to be a  
11 truthful and honest person?

12 A. Yes.

13 392. Q. How long have you known  
14 Mel Rhineland?er?

15 A. Ever since I was  
16 appointed to the Extendicare board, which was  
17 again in 2005.

18 393. Q. Do you have any reason to  
19 question Mr. Rhineland?er's credibility?

20 A. No.

21 394. Q. Do you know Mr.  
22 Rhineland?er to be a truthful and honest person?

23 A. Yes.

24 395. Q. How long have you known  
25 Alan Bell?

1                   A.    Ever since I was  
2    appointed to the ALC board, which is 2006.  That's  
3    my recollection.  I think he was appointed at the  
4    same time, but I'm not positive.  
5    396.            Q.    Do you have any reason to  
6    question Mr. Bell's credibility?  
7                   A.    No.  
8    397.            Q.    Do you know him to be a  
9    truthful and honest person?  
10                  A.    Yes.  
11    398.            Q.    How long have you known  
12    Eric Fonstad?  
13                  A.    Since he was recruited  
14    into ALC and, I'm sorry, I don't exactly remember  
15    the year.  
16    399.            Q.    And you interacted with  
17    Mr. Fonstad in the course of ALC board meetings  
18    and audit committee meetings?  
19                  A.    Yes.  
20    400.            Q.    Do you have any reason to  
21    question Mr. Fonstad's credibility?  
22                  A.    No.  
23    401.            Q.    Do you know him to be a  
24    truthful and honest person?  
25                  A.    Yes.

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1 402. Q. Ms. Bebo's counsel has  
 2 suggested that Mr. Fonstad suffers from some sort  
 3 of mental impairment.

4 Based on your interactions  
 5 with Mr. Fonstad, does he appear in any way  
 6 impaired to you?

7 A. No.

8 403. Q. Have you ever known him  
 9 to suffer a mental impairment or deficiency?

10 A. No.

11 404. Q. Ms. Ng, we have no  
 12 further questions at this time. Do you wish to  
 13 clarify or add anything to the statements you've  
 14 made today?

15 MR. KOCORAS: If I may, as  
 16 counsel, I do wish to ask her a couple of  
 17 questions, clarifying questions.

18 MR. HANAUER: And I was going  
 19 to certainly ask you, counsel, if you had any  
 20 follow-up questions.

21 EXAMINATION BY MR. KOCORAS:

22 405. Q. So if I may begin very  
 23 briefly, I'll refer to Commission Exhibit 199 and  
 24 provide a copy to Ms. Ng. There were a series of  
 25 questions related to this exhibit and I hope to

1 just add some clarity to the record.

2 Ms. Ng, you were asked about  
3 Exhibit 199, which includes what is purported to  
4 be written confirmation from Ventas regarding an  
5 agreement related to leasing rooms to employees.

6 Do you recall those questions?

7 A. Yes.

8 406. Q. You remarked in response  
9 to one of those questions that the confirmation  
10 appeared thin to you; is that correct?

11 A. Yes.

12 407. Q. And you remarked  
13 something to the effect that you would have sought  
14 more, perhaps; is that correct?

15 A. That's correct.

16 408. Q. Did you intend by that  
17 comment to mean that if you had been a member of  
18 management, seeking confirmation from Ventas of an  
19 agreement that employees could be counted toward  
20 occupancy covenants in a lease with Ventas, you  
21 would have sought more than the limited language  
22 in this e-mail; is that correct?

23 A. That's correct.

24 MR. KOCORAS: Nothing further  
25 from me.

1 BY MR. HANAUER:  
2 409. Q. Do you wish to make any  
3 statements, Ms. Ng?  
4 A. No.  
5 MR. HANAUER: We are off the  
6 record at noon.  
7 --- Whereupone the Interview concluded  
8 at 12:00 p.m.  
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# Exhibit 3

**UNITED STATES OF AMERICA  
SECURITIES AND EXCHANGE COMMISSION**

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**In the Matter of  
Assisted Living Concepts, Inc. (C-7948)**

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**DECLARATION OF JEANNINE HIATT**

I, Jeannine Hiatt, do hereby declare under penalty of perjury in accordance with 28 U.S.C. § 1746 that the following is true and correct, and further, that this declaration is made on my personal knowledge and that I am competent to testify as to the matters stated herein:

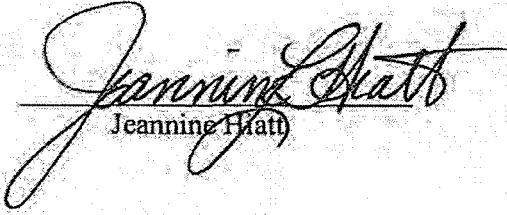
1. I was an employee of Assisted Living Concepts, Inc. ("ALC") from approximately January 2008 through August 2010 and from approximately March 2014 through May 2014. I have not been an ALC employee at any other time. While I was an ALC employee, I held the positions of Residence Director and Operations Specialist.

2. For at least a portion of the time period I was employed by ALC, ALC operated the following senior residences (collectively "the CaraVita facilities"), among others:

- a. Highland Terrace in Inverness, Florida;
- b. Peachtree Estates in Dalton, Georgia;
- c. Greenwood Gardens in Marietta, Georgia;
- d. CaraVita Village in Montgomery, Alabama;
- e. The Sanctuary in Acworth, Georgia;
- f. Tara Plantation in Cumming, Georgia;
- g. The Inn at Seneca in Seneca, South Carolina; and
- h. Winterville Retirement Center in Winterville, Georgia.

3. I have never visited CaraVita Village.

4. I have never stayed at The Sanctuary.

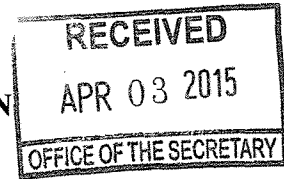
  
Jeannine Hyatt

  
Date





UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
CHICAGO REGIONAL OFFICE  
SUITE 900  
175 WEST JACKSON BOULEVARD  
CHICAGO, ILLINOIS 60604



BENJAMIN J. HANAUER  
SENIOR TRIAL COUNSEL  
DIVISION OF ENFORCEMENT

TELEPHONE: (312) 353-8642  
FACSIMILE: (312) 353-7398

April 2, 2015

**VIA UPS NEXT DAY AIR**

Brent J. Fields, Secretary  
Office of the Secretary  
Securities and Exchange Commission  
100 F. Street, N.E.  
Washington D.C. 20549

**Re: *In the Matter of Laurie Bebo and John Buono, CPA***  
**(AP File No. 3-16293)**

Dear Mr. Fields:

Enclosed for filing in the above-referenced matter please find the original and three copies of *The Division of Enforcement's Motion to Introduce Prior Sworn Statements of Two Members of ALC's Board of Directors who Reside Outside of the United States*, and the related Certificate of Service.

Sincerely,

Benjamin J. Hanauer

Enclosures

Copies to: Hon. Cameron Elliot, ALJ  
Mark Cameli, Esq.  
Patrick Coffey, Esq.